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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 369

THE SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED AUGUST 21, 1930

(35,291)

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SUPREME COURT OF THE UNITED STATES

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IN CIRCUIT COURT OF HARFORD COUNTY

Appeal of the SUSQUEHANNA POWER COMPANY from Decision of the State Tax Commission of Maryland in the Matter of the Assessment for Taxation of the Capital Stock of Said Company

PETITION AND ORDER THEREON—Filed Jan. 2, 1930

To the Honorable the Judges of said Court:

The petition of The Susquehanna Power Company, a corporation under the laws of Maryland, respectfully shows:

[fol. 5] I

That your petitioner is a corporation duly organized and formed under the laws of Maryland; having its principal office in Harford County, Maryland. In pursuance of the powers conferred upon it by the Maryland Act of 1908, Chapter 268, and otherwise, and under similar power and authority conferred upon it by the State of Pennsylvania, and especially in pursuance of a franchise conferred upon it by license of the Federal Power Commission authorizing and empowering it to develop a water power upon the Susquehanna River (under the designation of Project No. 405), your petitioner has constructed a dam and water power on the Susquehanna River, about eight (8) miles above Havre de Grace, said development consisting principally of the dam across the river, located partly in Harford and partly in Cecil counties and the power house and machinery thereof located at said dam in Harford County, and an extensive pool covering about ninety-one hundred (9,100) acres, formed by the damming of said river and extending up into the adjacent State of Pennsylvania, of which about fifty-nine hundred (5,900) acres are in Pennsylvania and thirty-two hundred (3,200) acres in Harford and Cecil counties, Maryland.

II

That in the year 1929 the State Tax Commission of Maryland, in assessing for State and County taxation for

said year the outstanding capital stock of your petitioner consisting of 245,500 shares, the taxes upon all or nearly all of which are payable in Harford County, notified your petitioner of a tentative assessment of six million dollars ($6,000,000) as the proposed valuation of said stock. Your petitioner protested such valuation and a hearing of said matter was had by said Commission subsequent to which, by order entered December 18th, 1929, said tentative assessment of six million dollars ($6,000,000) for said 245,500 shares was made final. Said assessment was arrived at by fixing a gross valuation of twenty-eight million seven hundred and twenty-six thousand one hundred and thirty-two dollars ($28,726,132) and deducting therefrom the assessment also determined by said Commission, of the real estate in Harford and Cecil counties owned by [fol. 6] your petitioner, leaving the net amount of six million dollars ($6,000,000) so fixed as the assessable value of your petitioner's stock.

III

That such assessment of your petitioner's said stock, the taxes upon which are required by law to be paid by your petitioner, is illegal and erroneous for the following reasons:

In the hearing of said matter your petitioner submitted to said Commission certain requests for rulings upon matters of law involved in the determination of the assessability of said stock and of the amount at which the same was properly assessable, if subject to such assessment; said prayers or requests for rulings being six in number, and a copy thereof marked "Exhibit A" being attached to this petition as part hereof. Said Commission refused and rejected all of said prayers or requests, except the second thereof, and in determining the assessability of said shares and the amount of said assessment, did not follow the legal principles laid down and stated in said requests, but arrived at said assessment in disregard of each and all of the same with the exception of the second of said prayers or requests, which they granted, in substance, as aforesaid.

As the result of rejecting said requests for such rulings on said questions of law, and following and applying con-

trary principles of law upon the questions so involved, said Commission arrived at an assessment greatly in excess of the true assessable value of said shares of stock, according to law, as will appear from a copy of said assessment and of the certificate thereof, both filed herewith as parts hereof and marked "Exhibits B and C."

Your petitioner therefore prays that a summons may issue to the State Tax Commission of Maryland (consisting of the three commissioners the Honorable Jesse D. Price, Edward O. Weant and Oscar Leser, their office being located in Baltimore City, Maryland); such summons to be in the form of a subpœna duces tecum requiring them to bring or produce in this court upon the hearing of this appeal the record of the aforesaid proceedings be-
[fol. 7] fore said Commission; and that such appeal may be heard by this Honorable Court upon a day to be designated by it, and that the action of the State Tax Commission in so valuing and assessing said shares of your petitioner's capital stock may be reversed and set aside, and your petitioner have such other and further relief as may be proper and appropriate in the premises.

And your petitioner, etc.
Chas. McHenry Howard, S. A. & F. R. Williams, Attorneys for Petitioner.

Duly sworn to by Stevenson A. Williams. Jurat omitted in printing.

Order

Ordered this 2nd day of January, 1930, by the Circuit Court for Harford County upon the aforesaid petition of appeal of The Susquehanna Power Company from decision of the State Tax Commission of Maryland, in the matter of
[fol. 8] the assessment for taxation of the shares of capital stock of said company, that summons be issued as prayed, and that the hearing of said appeal be and the same is hereby set for Friday, January 10th, 1930, at 10 o'clock A. M.

Walter W. Preston.

EXHIBIT A TO PETITION FOR APPEAL OF THE SUSQUEHANNA POWER COMPANY

BEFORE THE STATE TAX COMMISSION OF MARYLAND

In the Matter of the Assessment for 1929 of the Stock of the Susquehanna Power Company

The Susquehanna Power Company requests the State Tax Commission to rule, as matter of law:

1. That in determining the full value of the chattels held by or belonging to The Susquehanna Power Company in the State of Maryland, for the purpose of applying the minimum limitation requiring that the stock of said company shall not be valued at less than the full value of its real estate and chattels, real or personal, held by or belonging to it in the several counties and City of Baltimore, as required by Section 163 of Article 81 of the Code (1927), of Public General Laws, the turbine wheels, dynamos and other machinery installed by said company in its power-house and dam on the Susquehanna River, in Harford County, should be valued at their full value as machinery, without including in such valuation the cost and expense of installing the same or of adapting said power-house and dam to receive the same.

2. That in determining such full value of the chattels aforesaid for said purpose, said chattels should not be valued by a higher proportion of valuation than other chattels personal located in Harford County, are valued or assessed at.

[fol. 9] 3. That the turbines, dynamos and other machinery installed by said company in its said power-house and dam as well as the pool dam and power-house which have been assessed as real estate, constitute an essential or integral part of the "complete unit" constructed and erected by said company on the Susquehanna River under the license from the Federal Power Commission which has been offered in evidence at this hearing, and are therefore exempt from state and county taxation, because said company, in constructing and operating such unit, is acting as an agency or instrumentality of the Federal Government, and the value thereof cannot therefore be included, but

should be deducted, in the assessment of the stock of said company, by this Commission.

4. That said provision in Section 163 of Article 81 of the Code, requiring that in no case shall the capital stock of a corporation such as The Susquehanna Power Company, be valued in the aggregate for assessment at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several counties and City of Baltimore, is contrary to the provisions of the Constitution of Maryland, and void, and any assessment made at more than the fair value of such stock (from which is to — deducted the assessed valuation of the company's real estate in Maryland), because of such provision in the Mayland law, would deprive the owners of said stock or said company of their or its property without due process of law contrary to Article XXIII of the Declaration of Rights of the Maryland Constitution, and also contravene Article XV of the Declaration of Rights of the Maryland Constitution, requiring taxes to be levied and paid according to the actual worth, in real or personal property, of persons subject to assessment and taxation in said State.

5. That said provision in Section 163 of Article 81 of the Code is also contrary to the provisions of the Constitution of the United States and void, and any assessment made in pursuance thereof at more than the fair value of said stock, as last mentioned, would deprive said owners or said company of their or its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

[fol. 10] 6. That no value can be given to the capital stock of The Susquehanna Power Company in excess of the value of the real estate and chattels, real or personal, for assessment, without including in such valuation the value of the franchise rights of the corporation granted to it under the license from the Federal Power Commission, and such value is not subject to assessment for taxation by the State of Maryland or any political subdivision thereof.

EXHIBIT B TO PETITION

On October 10, 1929 the State Tax Commission entered a gross tentative assessment against The Susquehanna

Power Company of $28,726,132. A credit for real estate assessment of $22,726,132 was allowed, leaving a net assessment of $6,000,000. To this assessment the company protested under date of October 23rd. A hearing was set and held on November 8, 1929, at 10:45 A. M., at which testimony was presented and prayers were offered. The prayers Nos. 1, 3, 4, 5 and 6 were rejected. Prayer No. 2 was granted as modified.

The gross tentative assessment of $28,726,132, or a net assessment on 245,500 shares—$6,000,000 was made final.

Dated December 18, 1929.

EXHIBIT C TO PETITION

18th December, 1929.

Hon. Stevenson A. Williams, Bel Air, Maryland.

DEAR SIR: I beg to hand you herewith a copy of a memorandum this day made by the State Tax Commission in the matter of the assessment of the shares of capital stock of The Susquehanna Power Company as of January 1, 1929. [fol. 11] The net assessment of $6,000,000 has been made final and will be certified to the proper taxing authorities.

Very truly yours, Thomas A. Murray, Jr., Secretary.

Enclosure.

January 2, 1930.

[fol. 12] STATE TAX COMMISSSION OF MARYLAND, BALTIMORE

Date of Notification of Assessment: October 11, 1929.

Received in Office of State Tax Commission March 15, 1929.

REPORT AS OF JANUARY 1, 1929, OF THE SUSQUEHANNA POWER COMPANY, 1000 CHESTNUT ST., PHILADELPHIA, PA.

1. Date of incorporation: Oct. 29, 1919. Place of incorporation: Maryland.

2. Nature of business conducted: Hydro-electric power.

3. Where is the main office of such corporation in this State actually situated for the transaction of business: 15 Courtland Street, Bel Air, Harford County, Md.

3a. Does corporation transact all or any part of its business in Maryland: All in Maryland.

4. Names and addresses of officers:
W. H. Taylor, Pres., 1000 Chestnut St., Phila., Pa.
A. V. R. Coe, Sec., 1000 Chestnut St., Phila., Pa.
W. E. Long, Treas., 1000 Chestnut St., Phila., Pa.
H. R. Kern, Asst. Treas., 1000 Chestnut St., Phila., Pa.

5. Directors: M. R. Bockius, C. E. Ingersoll, W. A. Law, H. G. Lloyd, Thos. Newhall, W. H. Taylor, S. F. Tyler, S. A. Williams, L. M. R. Willis, J. T. Windrim, J. E. Zimmerman.

[fol. 13] 6. Capitalization

	Par per share	Authorized No. of shares	Issued No. of shares
Common Stock Class A	N. P. V.	135,000	110,500
Common Stock (Class B)	N. P. V.	135,000	135,000
Other Classes		None	None
Total		270,000	245,500

7. Total bonded debt outstanding January 1, 1929: $36,000,000.00.*

8. On how much of the above debt has interest been paid during 1928: On entire amount.

9. Dividends declared in 1927 and 1928: None.

10. Net profits of the corporation (before deducting dividends or interest payments) for the year ending January 1, 1929: See answer to question 15.

---

* This Company is a guarantor of $36,000,000 par value of 5½% 50-Year First Mortgage Gold Bonds, dated February 1, 1926, issued by the Philadelphia Electric Power Company, a Pennsylvania corporation, under a joint Mortgage and Deed of Trust to Fidelity Trust Co., Trustee, executed by the Philadelphia Electric Power Company and The Susquehanna Power Company. The entire amount of $36,000,000 is issued and outstanding as of this date.

11. How arrived at: Double entry system of accounting on accrual basis in accordance with the Md. P. S. Comm. Classification of Ac-ounts.

12. Amount on January 1, 1929: $4,866,886.36.

13. Gross earnings from all sources, without deductions for year ending January 1, 1929: $2,239,320.30.

14. Sale of stock during year: No sales. Price: No sale, hence no price. Estimate of present value: See note 14e.

Note 14e. This company shows no gain nor loss from operation therefore no value attaches to the stock other than its book value which is $19,824 per share.

[fol. 14] 15. Statement of Income and Expenditures and Charges for Year 1928

(This information should be classified)

Income

Rental and Disbursement of operating Expenses	$2,237,109.27
Interest on Bank Balances	2,211.03
	$2,239,320.30

Expenditures and Charges

Operation and Maintenance	$6,165.22
Renewals and Replacements	119,794.82
Interest on Advances	2,113,360.26
	$2,239,320.30

16. (Copy of Balance Sheet)

Statement of Assets and Liabilities as of January 1, 1929

The Susquehanna Power Company

Balance Sheet as of December 31, 1928

Asset Accounts

Fixed Capital Accounts: Construction Work in Progress	$45,797,111.42
Investment Accounts: Capital Stock of Sundry Companies	1.00
Special Deposit Accounts: Other Special Deposits	11,750.00

Current Asset Accounts:		
Cash	$117,271.05	
Accts. Rec. from Affiliated Cos.	859,841.51	
Other Accounts Receivable	155,705.12	
		1,132,817.68
		$46,941,680.10

[fol. 15] Liability Accounts

Corporate Capital Liability Accounts:		
Capital Stock—		
110,500 Shares Class A Common Stock N. P. V.	$2,219,000.00	
135,000 Shares Class B Common Stock N. P. V.	2,647,886.36	
		$4,866,886.36
Current Liability Accounts:		
Acct. Pay. to Affil. Cos.	$41,943,924.10	
Other Accounts Payable	11,074.82	
		41,954,998.92
Reserve Accounts:		
Reserve for Renewals & Replacements		119,794.82
		$46,941,680.10

16a. Depreciation reserve on buildings:—$119,794.82.

17. Schedule No. 1

Statement of Net Worth

The Susquehanna Power Company

December 31, 1928.

Assets

Current Assets:		
Cash	$117,271.05	
Accts. Rec. from Affil. Cos.	859,841.51	
Other Accts. Receivable	155,705.12	
		$1,132,817.68

Special Deposit Accounts:		
Other Special Deposits	11,750.00	
Investment Accounts:		
Capital Stk. of Sundry Cos.	1.00	
		$1,144,568.68
Fixed Properties:		
Detail on Schedule No. 2		45,677,316.60
		$46,821,885.28

[fol. 16] Liabilities

Current Liabilities:		
Accounts Pay. to Affil. Cos.	$41,943,924.10	
Other Accts. Payable	11,074.82	
		41,954,998.92
Total Net Worth		$4,866,886.36

Schedule No. 2

The Susquehanna Power Company,

Fixed Capital as of December 31, 1928

Organization	$4.50
Land—$4,518,737.83 includes cost of relocation of C. & P. D. R. R. amounting to $3,770,119.21	4,518,737.83
Dams, Reservoirs and Water Conduits	13,069,340.86
Power Plant Structures	2,608,259.23
Turbines and Water Wheels	2,800,430.64
Electric Generators	2,209,122.67
Other Electric Equipment	2,442,142.58
Other Power Plant Equipment	339,078.91
Land	25,343.94
Right of Way	67,475.43
Transmission System Structures	33,426.53
Sub-station Equipment	8,098.99
Poles and Fixtures	263,097.86
Overhead Conductors	152,165.78
Overhead Telephone System	4,525.81
Underground Conductors	5,505.24
Overhead Conductors	282.00
Meters	336.33

Meter Installations	177.99
Other General Structures	12,059.71
Other General Equipment	7,807.71
Eng. & Supt. during construction	3,305,737.73
General Office and Clerks' Salaries during construction	127.50
General Office and Clerks' Expenses during construction	289.42
[fol. 17] Office Supplies and Expenses during construction	4,297.19
Law Expenditures during construction	37,510.47
Injuries and Damages during construction	179.06
Insurance during construction	382,437.81
Taxes during construction	48,433.01
Interest during construction	3,322,733.23
Other Expenditures during construction	4,327,316.12
Land and Rights	5,800,629.34
Investment	$45,797,111.42
Less Accrued Depreciation	119,794.82
Investment in Fixed Capital depreciated to December 31, 1928	$45,677,316.60

Values cannot be accurately given and allocated until after final action is taken by the Federal Power Commission.

18. Amounts of inventories in 1928: None.

19. On what basis were inventories taken, whether at cost of market value, or other basis: No inventory taken.

19a. State whether any merchandise, materials or supplies were omitted from inventories; give particulars: No inventory taken.

20. Assessed value for 1929 of real estate owned by the corporation in Maryland, accompanied by certificate for the same from the Appeal Tax Court of Baltimore City or County Commissioners of the county where such real estate is located—from which appeals have been taken and are pending: $22,726,132.00.

21. Baltimore City Stock returned under Code, Art. 81, Sect. 168, owned by the corporation at the time of making this report and which was owned by it on January 1, 1929, and for six months continuously theretofore; and for which the certificate of the City Register of Baltimore is filed herewith, showing total par value of: None.

[fol. 18] 22. Deductible shares of stock of banks or other corporations of this State, returned under Code, Art. 81, Sect. 168, and which are owned by the corporation at the time of making this report and were owned by it on January 1, 1929, and for six months continuously theretofore: None. Description: None.

23. If said corporation has returned any shares under Question 22, state whether the same are owned by the corporation for which you are making this return, or are held by such corporation as a security for any loan or as a collateral security for any payment or other purpose, or as trustee or in any other fiduciary capacity: None.

H. R. Kern, Asst. Treasurer. (Corporate Seal.)

Affidavit

STATE OF PENNSYLVANIA,
County of Philadelphia, To wit:

On this 14th day of March, 1929, before me, the subscriber, a Notary Public of the State of Maryland, in and for the said county or city, personally appeared H. R. Kern, the assistant treasurer of the within-named corporation, and made oath in due form of law that the foregoing is a true return of all the property of every kind and description within the State of Maryland, owned or held by the said corporation on January 1, 1929, and that he has valued the property at its full cash value without reference to a forced sale; and that all statements contained in this schedule and the list of stockholders filed therewith are full, correct and true, without evasion or mental reservation whatsoever.

As witness my hand and official seal.

James Amenthe, Notary Public. (Commission expires January 21, 1931.) (Notarial Seal.)

(NOTE.—No entries are to be made on this page by the officers of the corporation.)

[fol. 19] Assessment

Aggregate Assessment	$28,726,132
Credits:	
Real Estate	22,726,132
Net Assessment	6,000,000
245,500 shares at $24.43	$6,000,000

Assessment entered 10/10, 1929.

(Signed) Jesse D. Price, Edward O. Weant, Oscar Leser, Commissioners.

No change.
December 18, 1929.

Distribution

Harford County: No. of shares, 245,500; assessment, $6,000,000.
Assessment subject to State Tax, $6,000,000.
Tax, $15,444.00.

1929.

Share Corporations: Public Service.

The Susquehanna Power Company,
1000 Chestnut Street,
Philadelphia, Pa. Annapolis, Md.

To the State of Maryland, Dr.

This bill payable when rendered
Interest after October First
Penalty after November First

	Assessment	Tax
State Tax of 25-74/100 c. per $100 on net aggregate assessment on shares of stock amounting to $6,000,000		$15,444.00
Penalty—10%		.....
Interest		.....
Penalty for failure to file schedule within time prescribed by law		.....
Total		$15,440.00

Make checks payable to Treasurer of Maryland and return bill.

[fol. 20] (Copy)

(Banks, Financial Corporations, and Public Service Corporations)

State Tax Commission of Maryland, 504 Union Trust Building, Baltimore, Md.

October 11, 1929.

To the Susquehanna Power Company, 1000 Chestnut St., Philadelphia, Pa.:

This is to notify you that the following assessment has been made on the shares of the corporation for the current year, and that the same will become final and conclusive unless sufficient reasons for a change therein shall be presented to the Commission within fifteen (15) days from this date. No change will be made in an assessment which has become final by reason of the lapse of the fifteen day period without protest.

State Tax Commission of Maryland. Thos. A. Murray, Jr., Secretary.

.....shares at $..... per share	$
Aggregate share valuation	$28,726,132
Credits:	
Real Estate, $22,726,132	22,726,132
Net aggregate assessment—	
245,500 shares at $24.43+.....	$6,000,000
Assessed value Baltimore City Stock $.....	

[fol. 21] Before State Tax Commission

October 23, 1929.

In the Matter of the Proposed Assessment of the Shares of Stock of the Susquehanna Power Company for the Year 1929

State Tax Commission of Maryland, 504 Union Trust Bldg., Baltimore, Md.

Gentlemen: The Susquehanna Power Company hereby protests the proposed assessment upon the shares of stock

of the corporation amounting to a net aggregate assessment on 245,500 shares in the sum of $6,000,000, at the rate of approximately $24.43 per share, and as reasons for this protest assigns the following:

1. Because the assessment of October 11, 1929, is without warrant of law and is void.

2. Because the said assessment is based upon values given to franchises and rights exercised by the corporation as a licensee under a license granted by the Federal Power Commission of the United States of America pursuant to Acts of Congress of the United States.

3. Because the said assessment is based upon values given to franchises and rights exercised by others as parties to contracts and agreements with the said corporation outside of the State of Maryland and pursuant to licenses and authorizations granted by the Government of the United States of America and of the Commonwealth of Pennsylvania.

4. Because the said assessment is based upon values given to flowage rights within the State of Maryland in the Susquehanna River which are not subject to taxation by the State of Maryland.

5. Because the said assessment is upon property and franchises oft he corporations which are exempt from taxation by the laws of the State of Maryland.

[fols. 22-25] 6. Because the said assessment is based upon values given to flowage rights in the Susquehanna River outside of the State of Maryland, to wit, in the Commonwealth of Pennsylvania.

7. Because the authority for the said assessment, to wit, Section 15 of Chapter 226 of the Laws of Maryland, approved April 2, 1929, is invalid in that it conflicts with the provisions of the Constitution of the United States.

8. Because the tax so imposed by the said assessment upon the owners of the shares of stock of the corporation is arbitrary, discriminatory and unlawful as a direct tax

upon such personal property, and is void as to nonresident owners.

Very respectfully yours, The Susquehanna Power Company, by S. A. Williams, Director, Attorney and Agent.

Duly sworn to by Stevenson A. Williams. Jurat omitted in printing.

[fol. 26] BEFORE STATE TAX COMMISSION

Appeal of THE SUSQUEHANNA POWER COMPANY from Decision of the State Tax Commission of Maryland in the Matter of the Assessment for Taxation of the Capital Stock of Said Company

PETITION FOR APPEAL TO THE COMPTROLLER OF THE TREASURY AND THE TREASURER OF THE STATE OF MARYLAND

To the Honorable the Comptroller and Treasurer Aforesaid:

The petition of The Susquehanna Power Company, a corporation under the laws of Maryland, respectfully shows:

I

That your petitioner is a corporation duly organized and formed under the laws of Maryland; having its principal office in Harford County, Maryland. In pursuance of the powers conferred upon it by the Maryland Act of 1908, Chapter 268, and otherwise, and under similar power and authority conferred upon it by the State of Pennsylvania, and especially in pursuance of a franchise conferred upon it by license of the Federal Power Commission authorizing and empowering it to develop a water power upon the Susquehanna River (under the designation of Project No. 405), your petitioner has constructed a dam and water power on the Susquehanna River, about eight (8) miles above Harve de Grace, said development consisting princi- [fol. 27] pally of the dam across the river; located partly in Harford and partly in Cecil counties and the power house

and mach-nery thereof located at said dam in Harford County, and an extensive pool covering about ninety-one hundred (9,100) acres formed by the damming of said river and extending up into the adjacent State of Pennsylvania, of which about fifty-nine hundred (5,900) acres are in Pennsylvania and thirty-two hundred (3,200) acres in Harford and Cecil counties, Maryland.

II

That in the year 1929 the State Tax Commission of Maryland, in assessing for State and County taxation for said year and outstanding capital stock of your petitioner consisting of 245,500 shares, the taxes upon all or nearly all of which are payable in Harford County, notified your petitioner of a tentative assessment of six million dollars ($6,000,000) as the proposed valuation of said stock. Your petitioner protested such valuation and a hearing of said matter was had by said Commission, subsequent to wh-ch, by order entered December 18th, 1929, said tentative assessment of six million dollars ($6,000,000) for said 245,500 shares was made final. Said assessment was arrived at by fixing a gross valuation of twenty-eight million seven hundred and twenty-six thousand one hundred and thirty-two dollars ($28,726,132) and deducting therefrom the assessment, also determined by said Commission, of the real estate in Harford and Cecil counties owned by your petitioner, leaving the net amount of six million dollars ($6,000,000) so fixed as the assessable value of your petitioner's stock.

III

That such assessment of your petitioner's said stock, the taxes upon which are required by law to be paid by your petitioner, is illegal and erroneous for the following reasons:

In the hearing of said matter your petitioner submitted to said Commission certain requests for rulings upon matters of law involved in the determination of the assessability of said stock and of the amount at which the same was properly assessable, if subject to such assessment; said [fols. 28-30] prayers or requests for rulings, being six in

number, and a copy thereof marked "Exhibit A" being attached to this petition as part hereof. Said Commission refused and rejected all of said prayers or requests, except the second thereof, and in determining the assessability of said shares and the amount of said assessment, did not follow the legal principles laid down and stated in said requests, but arrived at said assessment in disregard of each and all of the same, with the exception of the second of said prayers or requests, which they granted, in substance, as aforesaid.

As the result of rejecting said requests for such rulings on said questions of law, and following and applying contrary principles of law upon the questions so involved, said Commission arrived at an assessment greatly in excess of the true assessable value of said shares of stock, according to law, as will appear from a copy of said assessment and of the certificate thereof, both filed herewith as parts hereof and marked "Exhibits B and C."

Your petitioner therefore prays that the said Comptroller and Treasurer shall consider its appeal, and that the valuation and assessment of the capital stock of your petitioner by the said State Tax Commission may be declared erroneous and ought to be changed, and shall change the same accordingly, and that this appeal may be heard upon a day to be designated by said Comptroller and Treasurer, and that your petitioner may have such other further relief as may be proper and appropriate.

And your petitioner, etc.

(Signed) Chas. McH. Howard, (Signed) S. A. & F. R. Williams, Attorneys for Petitioner.

[fol. 31] EXHIBIT B. TO PETITION FOR APPEAL

On October 10, 1929, the State Tax Commission entered a gross tentative assessment against The Susquehanna Power Company of $28,726,132. A credit for real estate assessment of $22,726,132 was allowed, leaving a net assessment of $6,000,000. To this assessment the company protested under date of October 23rd. A hearing was set and held on November 8, 1929, at 10.45 A. M., at which testimony was presented and prayers were offered. The Pray-

ers Nos. 1, 3, 4, 5 and 6 were rejected. Prayer No. 2 was granted as modified.

The gross tentative assessment of $28,726,132, or a net assessment on 245,500 shares—$6,000,000 was made final.

Dated December 18, 1929.

It is Hereby Certified, That the foregoing is a full, true and complete transcript of the Record of Proceedings of the State Tax Commission of Maryland in the matter of the valuation and assessment of The Susquehanna Power Company for the year 1929.

As Witness my hand and the seal of the State Tax Commission of Maryland, this 8th day of January, 1930.

Thomas A. Murray, Jr., Secretary. (Seal.)

[fol. 32] State of Maryland, State Tax Commission, Union Trust Building, Baltimore

It is hereby certified, That the attached is a true copy of the report of The Susquehanna Power Company as of January 1, 1927, filed in the office of the State Tax Commission of Maryland on March 15, 1927.

As Witness my hand and the seal of the State Tax Commission of Maryland, this 29th day of January, 1930.

Thomas A. Murray, Jr., Secretary. (Commission Seal.)

State Tax Commission of Maryland, Union Trust Building, Baltimore

Received in Office of State Tax Commission March 15, 1927.

Date of Notification of Assessment: ——, 1927.

Report as of January 1, 1927, of The Susquehanna Power Company, 1000 Chestnut Street, Philadelphia, Pa.

1. Date of incorporation, Oct. 29, 1919; place of incorporation, Maryland.

2. Nature of business conducted: Contemplated Hydro-Electric Power.

3. Where is the main office of such corporation in this State actually situated for the transaction of business? 15 Courtland Street, Bel Air, Harford County, Md.

[fol. 33] 3a. Does corporation transact all or any part of its business in Maryland?

4. Names and addresses of officers:
President, W. H. Johnson,
Secretary, J. B. McCall, Jr.,
Treasurer, W. E. Long,
1000 Chestnut St., Philadelphia, Pa.

Directors

M. R. Bockius,
C. E. Ingersoll,
W. H. Johnson,
W. A. Law,
H. G. Lloyd,
J. R. McAllister,
Thos. Newhall,
S. F. Tyler,
J. T. Windrim,
L. M. R. Willis,
S. A. Williams

Capitalization

	Par per share	Authorized No. of shares	Issued No. of shares
Common Stock, Class A	N. P. V.	135,000	110,500
Common Stock, Class B	N. P. V.	135,000	135,000
Other Classes		None	None
Total		270,000	245,500

7-16a. Blank.

17. See Note "B".

18-21. Blank.

21. Baltimore City Stock returned under Code, Art. 81, Sec. 168, owned by the corporation at the time of making this report and which was owned by it on January 1, 1927, and for six months continuously theretofore; and for which [fol. 34] the certificate of the City Register of Baltimore is filed herewith, showing total par value—None.

22. Deductible shares of stock of banks or other corporations of this State, returned under Code, Art. 81, Sec. 168, and which are owned by the corporation at the time of making this report and were owned by it on January 1, 1927, and for six months continuously theretofore—None.

23. If said corporation has returned any shares under question 22, state whether the same are owned by the corporation for which you are making this return, or are held by such corporation as a security for any loan or as collateral security for any payment or other purpose, or as trustee or in any other fiduciary capacity—None.

W. E. Long, Treasurer. (Corporate Seal.)

Date: March 14th, 1927.

Affidavit

STATE OF PENNSYLVANIA,
County of Philadelphia, To wit:

On this 14th day of March, 1927, before me, the subscriber, a Notary Public of the State of Pennsylvania, in and for the said county or city, personally appeared W. E. Long, the treasurer of the within-named corporation, and made oath in due form of law that the foregoing is a true return of all the property of every kind and description within the State of Maryland, owned or held by the said corporation on January 1, 1927, and that he has valued the property at its full cash value without reference to a forced sale; and that all statements contained in this schedule and the list of stockholders filed therewith are full, correct and true, without evasion or mental reservation whatsoever.

As Witness my hand and official seal.

James Amenthe, Notary Public. (Notarial Seal.)

(NOTE.—No entries are to be made on this page by the officers of the corporation.)

[fol. 35] Assessment

Aggregate assessment	$733,905.
Credits—Real Estate	733,905.
	Balanced

Assessment entered 5/31/1927.

(Signed) Jesse D. Price, J. Enos Ray, Commissioners.

Distribution

Harford County—Number of shares, 245,500.
Incorporated Town—Bel Air—245,500 shares.

The Susquehanna Power Company, Tenth & Chestnut Streets, Philadelphia, Pa.

August 1, 1927.

Mr. Thomas A. Murray, Jr., Secretary State Tax Commission, Union Trust Building, Baltimore, Md.

DEAR SIR: We acknowledge receipt of your letter of July 26, inquiring as to the exact nature of business conducted by this company and whether or not any business was transacted during the year 1926.

In answer to your inquiry, we wish to state that this company, The Susquehanna Power Company, can hardly be said to have conducted any business during the time mentioned. It has been and is now engaged in the develop-[fol. 36] ment of a hydro-electric project on the Susquehanna River and, aside from the prosecution of construction work, its activities were confined to the purchase from various individuals in the State of Maryland of certain real estate and water rights necessary or which will become necessary to the final completion of this hydro-electric development. Throughout the period of construction work, which will continue until some time in the year 1928, this company has found it possible to rent or lease certain houses, buildings or farms which are not immediately needed for the construction work. The total rents thus collected have amounted in the aggregate for the year 1926 to approximately $8,000.00. Its expenditures for land, etc., acquired during construction are charged to fixed capital. The income from rents, etc., is credited to fixed capital. This company has not, of course, been able to produce or sell any power as yet and will not be able to do so until its construction work is completed.

Very truly yours, (Signed) W. E. Long, Treasurer.

The Susquehanna Power Company Capital Stock Report

Maryland State Tax Commission

(Due March 15, 1927)

NOTE A:

Answer to Questions 7 to 11, inclusive:

The total bonded debt outstanding January 1, 1927, is $36,000,000, for the payment of which the properties of

this company and the Philadelphia Electric Power Company are jointly mortgaged; the responsibility of each company to the other bring approximately that proportion of the total issue represented by the expenditures which will be made on the property of each company, respec- [fol. 37] tively. This company's proportion cannot be ascertained until the completion of the Conowingo Project.

Interest on the entire $36,000,000 has been paid during the year 1926 out of advances by the trustee under the mortgage from principal.

There have been no dividends declared in 1925 and 1926.

This company has no net profits for the year ending January 1, 1927.

Note B:

Answer to Questions 12 to 20, inclusive:

These questions are not applicable to the company in its present situation.

The company is engaged in the construction of its dam and power house on the Susquehanna River to be known as the Conowingo Project. The construction will not be completed until some time in 1928.

In the meantime the company conducts no operation and has no earnings.

Its expenditures, rents and interest are charged during construction to fixed capital.

This company's capital stock consists entirely of no par value shares which were issued by the company several years ago; the amount of issue remaining unchanged. All of the stock of this company was transferred on the books during the year to Philadelphia Electric Power Company in order that the latter company might have full control of all of the company's physical assets. Philadelphia Electric Power Company and its affiliated companies are supplying all of the construction money. This construction money will eventually be represented in part debts to the affiliated companies and probably in part by capital stock. Until accounts of the construction and until the approval of the company's accounts by the Public Commissions having jurisdiction thereof, no final division of capitalization between capital stock and liabilities can be made.

All of the company's property is fixed property, consisting of water rights, rights of way, lands and interests in

land. All of the land, buildings and equipment for con-
[fol. 38] structing the company's dam and power plant have been locally assessed and without its said land, buildings, equipment, etc., so locally assessed, the stock of this company has no value. Certificates of such local assessment issued by the Commissioners of Harford and Cecil Counties, respectively, are filed herewith. The only assets not belonging to the class of fixed assets and locally assessed, are the following:

Stock of Delta Water Power Co. (Pa. Corp.)	$13,590.00
Advances to affiliated companies (Pa. Corp.)	60,829.83
Capital stock of affiliated companies (Pa. & Md.)	1.00
Cash and other assets	23,563.76
Total	$97,984.59

Offices of County Commissioners of Harford County, Bel Air, Maryland

March 11,1927.

This Is To Certify, In pursuance of Section 151, Chapter 178, Laws of Maryland, 1878, that Susquehanna Power Company is assessed on the Tax Books in Harford County for Real Estate to the amount of $669,874.00, and for Personal Estate to the amount of $—. Total, $—.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said County Commissioners, this 11th day of March, in the year 1927.

J. M. Bosley, Clerk. (Seal.)

[fols. 39-44] Before State Tax Commission of Maryland

Statement of Evidence

[fol. 45] Thereupon, Jesse V. Sealy, a witness of lawful age, being produced on behalf of The Susquehanna Power Company, first being duly sworn, testified as follows:

Direct examination.

(By Mr. Howard:)

Q. Tell the Commission your occupation and your place of residence?

A. My residence is at Lawndowne, Pennsylvania; and I am an accountant for The Susquehanna Power Company.

(Mr. Howard:) Will the Commission loan us the original return that was made?

(Note)—This return was produced and handed to Mr. Howard.

(Mr. Howard:) I will now hand this original return to the witness.

(Mr. Robinson:) Is this the report that was made to the State Tax Commission?

(Mr. Howard:) This is the report upon which our assessment is supposed to have been made. It was handed to me by the Chairman of the Commission.

Q. Will you look at the paper I now hand you and say what it is?

A. It is the report of The Susquehanna Power Company as of January 1st, 1929, made to the State Tax Commission of Maryland.

[fol. 46] Q. Are you familiar with the data that goes to make up that report?

A. I am——

Q. Did you aid in getting it up?

A. I did.

Q. Did you verify the various answers there?

(Mr. Robinson:) Did he get it up or only assist in getting it up?

Q. Who was responsible for getting up this report?

A. It was prepared under my direction, and I was responsible for it.

Q. And you are familiar with the various items in that report?

A. Yes, sir.

Q. You have checked them up with the company's book?

A. They are in correspondence with the company's books.

Q. Are these items true and correct and in accordance with the company's books?

A. Yes, sir; they are.

Q. This report shows the amount of stock outstanding, don't it?

A. Yes, sir.

Q. It shows the amount of each class of stock?

A. Yes, sir.

Q. And shows those items correctly?

A. Yes, sir.

(Mr. Robinson:) We haven't any copy of that and don't know what you are talking about.

(Mr. Howard:) We are talking about a report made in accordance with the law.

(Mr. MacNabb:) But he does not answer how much these items are.

(Mr. Price:) This report is on file and I don't see how this is helping us much.

(Mr. Howard:) You don't want to know what his mailing address is?

[fol. 47] (Mr. Robinson:) No, sir; but we would like to see this original report filed with the Commission.

(Mr. Howard:) It was just handed to me by the Chairman of the Commission, and I handed it to the witness.

Q. So that the statements in that report are correct according to the books of the company, to the best of your knowledge and belief?

A. Yes, sir; they are.

Q. Now, part of your report, Schedule No. 1, contains a statement of net worth, you have verified those figures from the books of the company?

A Yes, sir; that statement has been verified with the company's books.

Q. Now, Schedule No. 2 is called a statement of fixed capital as of December 31, 1928; that would be the same as January 1st, 1929?

A. Yes, sir.

Q. There was no difference between those two dates?

A. No, sir.

Q. And those figures show the value, cost of what?

A. That is the cost or investment of the company in the accounts indicated.

Q. It shows the actual investment made up to that time in acquiring or constructing the various items enumerated?

A. Yes, sir.

Q. Are those account kept in accordance with any regulations or methods?

A. Yes, sir; they are kept in accordance with the requirements of the Public Service Commission.

(Mr. Howard:) That is all I wish to ask this witness.

Cross-examination.

(By Mr. Robinson:)

Q. You say that you prepared this report?

A. Yes, sir; I said it was prepared under my direction.

[fol. 48] (Mr. Howard:) By that you mean that you had some one to assist you with the arithmetical work?

(The Witness:) Yes, sir.

Q. What do you mean when you say that it was prepared under your directions?

A. My assistants made up statements and I examined and verified them and prepared the report.

Q. They were made up by your assistants and verified by you?

A. Yes, sir.

Q. This schedule No. 2 shows a fixed investment of $45,677,316.60?

A. That is the investment less depreciation to December 31, 1928.

Q. How much depreciation went into that?

A. The depreciation is $119,794.82.

Q. That is less depreciation?

A. Yes, sir; and the total amount is $45,677,313.60.

(Mr. Howard:) That is the net after taking off the depreciation?

(The Witness:) Yes, sir.

(Mr. Howard:) And the amount taken off was $119,794.82?

(The Witness:) Yes, sir.

Q. What do your books show as the amount of the investment upon which the company claims a right to earn seven per cent?

(Mr. Howard:) Does that refer to any order?

(Mr. Archer:) An order already in the case, an order of the Public Service Commission, and filed here in this case.

(Mr. Robinson:) Do you understand my question?

[fol. 49] A. Yes, sir; the amount is $45,797,111.42.

Q. That is before any depreciation is taken off?

A. Yes, sir.

(Mr. Howard:) It is the same item plus the depreciation, isn't it?

(The Witness:) Yes, sir.

(Mr. Weant:) What are the figures?

(The Witness:) The investment before depreciation is $45,797,111.42, from which is deducted a depreciation of $119,794.82, leaving an investment of $45,677,316.60.

Q. Did you understand the question that I asked you?

A. Yes, sir.

Q. I asked you what was your statement to the Public Service Commission as to the value of the investment upon which the company desired a return of seven per cent; what was the value placed upon it at that time?

A. I don't have the statement to the Public Service Commission here, and without the report that was made to the Public Service Commission I don't see how I can answer that.

(Mr. Howard:) Did you use the figures established for the Public Service Commission as a basis for your return here?

(The Witness:) No, sir. Both of the reports, this one to the State Tax Commission and also the one to the Public Service Commission, I presume report as an investment $45,797,111.42. Of course, I haven't the report to the Public Service Commission before me——

(Mr. Robinson:) We don't want any presumptions; if you can't answer the question, just say so.

(Mr. Williams:) He says that he cannot answer it without the report to the Public Service Commission.

(Mr. Mason:) I don't think the figures used then were [fol. 50] the same as used in this report; the figures then were as of December 31st, 1927. That was the basis used by the Commissioners of the two counties plus certain additonal figures.

Q. Have you the books of the company here?

A. No, sir.

Q. What do the books show as to the value of the machinery of The Susquehanna Power Company?

(Mr. Howard:) The books ordinarily show the cost of the machinery; you said "value."

(Mr. Robinson:) I want to know what they are worth up there?

A. They show the following items: Turbines and water wheels, $2,800,430.64; electric generators, $2,209,122.67; other electrical equipment, $2,442,142.58——

Q. What are you reading from?

A. Schedule No. 2 attached to the report filed with the State Tax Commission as of January 1st, 1929.

Q. Go ahead, then?

A. Other Power Plant Equipment and additional items, $339,078.91; Meters, $336.33; Other General Equipment, $7,807.71—making a total of $7,798,918.84—representing the company's investments in those accounts.

Q. What does "power plant structures" mean?

A. Buildings.

Q. Now, you gave us an exhibit as of September 30th, 1928, at the last hearing, in which you placed a value on the machinery of $8,131,341.43, which is correct?

A. That is not the value—that is the investment in turbines, waterwheels, electric generators and other equipment, and includes, in adidtton to the company's investment in those accounts as I have given them to you, a proportion of the construction fee and administration expenses, which are carried in another account in this report.

Q. Why do you say that?

A. Because that is the way they appear on the company's books.

[fol. 51] Q. But you haven't those books here with you?

A. No, sir.

Q. Then how do you remember that?

A. In this way—I am very familiar with the company's books over a long period of time, and further the statement which you gave me—this exhibit on page four—has a detail of how this figure of $8,131,341.43 is made up. It shows that this amount contains something in the neighborhood of $600,000.00 of construction fees and administration expenses.

Q. That all goes into the value of the property, doesn't it?

A. That is an element of our investment in the property.

Q. There is no dispute about this being one of those reports that you furnished at the other hearing, is there?

A. No, sir.

Q. You got up those figures?

A. Yes, sir—that is as far as it had anything to do with the statement of the company's investment in that property.

Q. Do you know of the lease between The Susquehanna Power Company and the Philadelphia Electric Company?

A. Yes, sir.

Q. Do you know what is the amount of rental to be paid The Susquehanna Power Company?

A. Yes, sir—I know the contract in a general way.

Q. Doesn't that lease provide for The Suscquehanna Power Company to be paid not less than $4,030,000.00 per year?

A. Not that I recall.

(Mr. Howard:) I find no such provision in the lease I have, and you are asking this witness the details of a legal document—there are mortgages and leases, and I don't think this witness can testify about them.

(Mr. Robinson:) This witness is an accountant and understands all about the books of the company—he made up this statement and he is an expert witness. Now I am [fol. 52] asking him if he knows what rent The Susquehanna Power Company receives from the Philadelphia Electric Company.

(The Witness:) I don't recall the lease containing any such a provision.

Q. Do you know anything about the receipts of The Susquehanna Power Company?

A. Yes, sir.

Q. What are they?
A. During the period covered by this report?
Q. No—I mean at this time—1929?

(Mr. Howard:) What relevancy has the receipts at this time?
(Mr. Robinson:) Do you object to the question?
(Mr. Howard:) Yes, sir.
(Mr. Robinson:) I will withdraw that question.

Q. Do you know anything about the lease of the property of The Susquehanna Power Company?
A. I know of it in a general way.
Q. You know that it is leased?
A. I know the contents of the lease in a general way.
Q. Do you know what the Philadelphia Electric Company has guaranteed to pay The Susquehanna Power Company per year as a minimum?
A. I don't know any minimum—my recollection is that it provides for a return rate of seven per cent per annum.
Q. Doesn't it provide for a minimum at all?
A. Not that I recall.
Q. There is a provision in every lease that I have ever seen providing not for a fixed return, but fixing a certain minimum rent?
A. The rent is seven per cent on the investment.
[fol. 53] Q. No—that is not it?
A. Without the lease before me I am at a disadvantage.

(Mr. Howard:) We have filed the lease.
(Mr. Robinson:) This lease that I have here—I have never seen any different one—provides a minimum of $4,030,000.00 is to be paid to The Susquehanna Power Company by the Philadelphia Electric Company.

Q. You are the bookkeeper for the company, are you not?
A. I don't recall any such provision in the lease. It may be there, but I don't recall it.
Q. May I show it to you?
A. Yes, sir.
Q. Here it is?
A. Is this the lease?

(Mr. Robinson:) It is a copy furnished by the company.

(Mr. Howard:) We are willing to agree that the lease and mortgage filed in the other case shall be considered in this case.

(The Witness:) If this is what is in there, I don't recall seeing it in what I have known as a copy of the lease between the Philadelphia Electric Company and The Susquehanna Power Company.

Q. Where is it?

A. In the office in Philadelphia.

Q. You have nothing here at all on that?

A. No, sir.

(Mr. Robinson:) This is a copy of the lease that was filed with the Public Service Commission of Pennsylvania.

(Mr. Howard:) Why can't we agree ot use the copies of the mortgage and lease that were filed previously in this case; just refile them at this time?

(Mr. Price:) Is there any dispute about that being a copy of the lease?

[fol. 54] (Mr. Mason:) A number of changes were made in the provisions of that lease after it was filed with the Commission; there are three commissions known in this matter, the Public Service Commissions of Pennsylvania and Maryland and the Federal Power Commission; my recollection is that there was some change made in that provision about the rental.

(Mr. Howard:) This may not be the final lease.

(Mr. Robinson:) It was filed in 1929.

(Mr. Mason:) That is what was supposed to be filed; I would have to see it to know.

(Mr. Price:) Is there any dispute about that being the final lease?

(Mr. Mason:) There seems to be some dispute about that being the final copy, but the only difference in the final draft of the lease is that there is no lump minimum sum stated as a rental. The rental in the final copy is a combination of total expenses plus seven per cent upon the actual liquidated investment in the project.

(Mr. Williams:) My recollection is that the fixed amount was changed by the Commission.

(Mr. Robinson:) If it was by a Commission, shouldn't he know it?

(By Mr. Weant:)

Q. Don't your books show the income for 1928?

A. Yes, sir.

Q. Don't that include the rental?

A. Yes, sir.

Q. Didn't you bring your books along to show what the income was?

A. No, sir; in the report there is a statement of the income and expenditures. The rent received during 1928 amounted to $2,237,109.27.

Q. That was the rent that you did receive in 1928?

A. Yes, sir.

[fol. 55] Q. That paid you in full?

A. Yes, sir; that was all that was earned in that period.

(By Mr. Robinson:)

Q. What time did you begin operations in 1928?

A. The first unit was put into operation in March, 1928.

Q. That was during the construction period?

A. Yes, sir.

Q. When were the other five units put into operation?

A. The seventh unit was placed in operation July 1st, 1928.

Q. They were just being constructed during that period?

A. Yes, sir. The plant was in full operation the last six months of the year, and in partial operation the first six months of the year.

Q. In addition to this rent, all the taxes and expenses are paid by the Philadelphia Electric Company, are they not?

A. They are either paid by them or reimbursed to The Susquehanna Power Company.

Q. That is the same thing, is it not?

A. Yes, sir.

Q. And, in addition to that, there is a provision in the lease about depreciation, is there not?

A. Yes, sir.

Q. You are reimbursed for all expenses, taxes and depreciation, and receive a minimum rental of $4,030,000.00; that is, according to the copy of the agreement that you have filed with the State Tax Commission?

A. I don't know about that amount.

Q. That is the amount shown in this booklet?

A. Yes, sir.

Q. And what was filed by The Susquehanna Power Company as a copy of their lease?

A. I don't know about that; I don't know what was filed.

Q. And you don't know the provisions of this lease?

A. In a general way I do.

[fol. 56] Q. You didn't mean to file one here that was not correct, did you?

A. I didn't file that one.

Q. You are the bookkeeper?

A. Yes, sir.

Q. You keep the accounts?

A. Yes, sir.

Q. Was that $4,030,000.00 rent not to The Susquehanna Power Company; was that in addition to taxes and depreciation?

A. Whatever the sum might be as rent, it would be net; we are reimbursed for our expenses, including taxes and depreciation.

Q. So they would get as a return, The Susquehanna Power Company, as lessor of this property seven per cent on a little over fifty-seven million dollars?

A. I would not say that.

Q. You are the accountant and ought to know?

A. Perhaps the minimum figure is $4,030,000.00; and that would be seven per cent on about fifty-seven million dollars. However, I don't know that that figure is correct.

Q. You don't seem to know anything about any figures except those you are reading off that report, and I don't see how you keep the books if you don't know what the income is; if this is not correct, what is correct; what is the revenue received annually by The Susquehanna Power Company?

(Mr. Howard:) The lease fixes what they get.

(Mr. Robinson:) And he says that he has gotten it, but he don't know whether this is correct or not.

(Mr. Howard:) The final copy of the lease is the correct one.

(Mr. Robinson:) Isn't this the correct one? You filed it.

(Mr. Howard:) I thought it was the correct one, but whether or not any changes have been made in that copy, I

can't say. However, Mr. Mason will telephone over to my office and get the latest copies of the lease and mortgage.

[fol. 57] (Mr. Williams:) That one is substantially correct. I think that the only change made, material one, was a change from a minimum fixed sum as rental to a return of seven per cent on the investment.

(Mr. Howard:) It was the correct one, and if any changes had been made in it I did not know of them.

(Mr. Robinson:) This copy of the lease is approximately correct, is it?

(Mr. Howard:) I think so.

(Mr. Price:) Is there any dispute that they get a return of seven per cent on their investment?

(Mr. Robinson:) No, sir; but the lease filed here sets the minimum return as $4,030,000.00.

(Mr. Price:) And that is seven per cent on a little over fifty-seven million?

(The Witness:) A return of seven per cent on the fixed capital as of January 1st, 1929, would be approximately $3,220,000.00.

Q. Do you know whether or not seven per cent or any other per cent is mentioned in this lease I have here?

A. There is no percentage mentioned in the paper that you have before you. That is not a copy of the lease as it was finally revised. That copy of the lease provides for a return at the rate of seven per cent.

(Mr. Robinson:) Where is that lease?

(Mr. Mason:) I hope it is in the papers for which Mr. Howard has sent to his office.

(Mr. Robinson:) That is all from this witness.

Redirect examination.

By Mr. Howard:

Q. You used the expression, in testifying about these figures on that report, "total investment" in those accounts—can you explain just what you mean by that?

[fol. 58] A. They are the total charges that have been entered upon the books of the company as of the date of that report.

Q. Is that confined to cost, or does it include other items—take for instance the turbines—does that just in-

clude the cost of them f. o. b. the plant, or does it also include the cost of adapting them to the plant?

A. I do know that it includes not only the price that was paid the manufacturers for them, but also the cost of erection and handling them incident to putting them into the plant.

(Mr. Howard:) That is all from this witness.

(Testimony of witness concluded.)

Mr. Howard:) I now offer to file with the Commission the lease, the mortgage—the whole series of papers.

Thereupon, ALEXANDER WILSON, III, a witness of lawful age, being produced on behalf of the Power Company, first being duly sworn, testified as follows:

Direct examination.

By Mr. Howard:

Q. Tell the Commission your place of residence and your occupation?

A. I reside at Lansdowne, Pennsylvania, I am an engineer, and am assistant chief engineer of the Philadelphia Electric Company.

Q. Tell the Commission briefly what has been your training and experience as an engineer?

A. I studied at Cornell where I received the degree of Mechanical Engineer. Since then I have been employed for eighteen years or more by the Philadelphia Electric Company and associated companies.

Q. What character of work have you been doing?

A. I started out with practical work—erecting switchboards and sub-station equipment, and continued on through inspection of building construction. I was assistant to the vice-president in charge of engineering operations; [fol. 59] and, under his supervision, had direct charge of the construction of the principal generating plants of the system, and in the east.

Q. You mean the generating plants near Philadelphia and elsewhere?

A. Yes, sir—Conowingo.

Q. What was your connection with the work at Conowingo?

A. I was executive assistant to the vice-president, and have been in charge of the business end of that work.

Q. Then you are familiar with the Conowingo project and the various details of it?

A. Yes, sir.

(Mr. Robinson:) Were you on the ground during the construction work?

(The Witness:) I spent possibly four days a week there during the heaviest part of the construction—since then it has been getting less.

Q. I am asking you to look at Schedule No. 2, which forms part of the report made by The Susquehanna Power Company to this Commission, in connection with the assessment of 1929 on capital stock—this Schedule No. 2 professes to be an analysis of the fixed capital stock of the company—are you familiar with the items enumerated in that schedule?

A. I have a general knowledge of the classification of accounts; and this is in accordance with the classification as far as I can recall the details now.

Q. And that classification is the one required by the Public Service Commission?

A. So I understand.

Q. Mr. Sealy just testified that, among those items there, are items showing the investment in turbines, machinery, etc.; and I think he picked out six of these aggregating $7,798,118.84, as being the items showing such investment. Can you tell the Commission what these items do show—what they show as to the cost of these items, and in what way they were ascertained and made out—do you know about all of that?

A. I know it to this extent—that all purchases and charges for labor and material must be made in accordance [fol. 60] with the classification of the accounts.

(Mr. Robinson:) Do you know if this was done in this particular instance?

(The Witness:) To the best of my knowledge, it was.

(Mr. Robinson:) Did you have anything to do with it?

(The Witness:) Yes, sir—to this extent: The men worked under my supervision and I was responsible to see that the clerks made the entries correctly.

Q. You knew of the purchases of machinery?

A. Yes, sir.

Q. Did you purchase it?

A. No, sir. It was purchased through the construction agent—on quotations submitted to them for approval; and I received copies of the purchase orders and checked them.

(Mr. Robinson:) You had nothing to do with making up these accounts, did you?

(The Witness:) No, sir.

(Mr. Robinson:) And you have nothing to go by here except looking at some one else's accounts?

(The Witness:) That is all.

(Mr. Robinson:) We object as this gentleman didn't keep the accounts, and had nothing to do with this report—he didn't help to do anything with it.

(Mr. Howard:) In the accounting of these large corporations there is no one man who makes all the entries, and this witness is entitled to testify from a summary that he knows to be correct.

(Mr. Robinson:) We will withdraw our objection.

Q. Mr. Wilson, can you tell the Commission what was the actual cost to the company of the various items of [fol. 61] machinery—what was the actual cost of The Susquehanna Power Company of the generators and other items of machinery shown on this list that was return- to this Commission?

A. I can say that I have examined in detail the reports of the construction agents—Stone and Webster, and Dan Zimmerman. I have spot checked certain of these items shown in these reports against the purchase orders, which these agents issued for the purchase of certain machinery——

(By Mr. Robinson:)

Q. You have done that in reference to these items?

A. Yes, sir.

Q. Is it any part of your business to know the expenses incident to the purchase of machinery there—as assistant chief engineer?

A. If you want me to amplify my duties, I will do so. I have defined what I have to do.

Q. As assistant chief engineer, is it any part of your business to know the expenses incident to the purchase of machinery there?

A. Yes, sir.

Q. As assistant chief engineer, you had charge of the purchase of this machinery?

A. As an employe of the company, I would say yes to your question.

Q. What memorandum did you keep of that?

A. Of what?

Q. Of the cost of the machinery.

A. I have copies of the purchase orders.

Q. You may have gotten them; when, lately?

A. As the purchases were made and before the purchases were made I received the bid sheets——

Q. Where are they?

A. In Philadelphia.

(Mr. Price:) It seems to me that we are making mighty slow progress in this matter.

(Mr. Robinson:) This witness ought to show that he knows something about it before he is allowed to testify.

(Mr. Howard:) If we were to take up these items the [fol. 62] way you would prove a mill account or the way groceries were bought, we will be a long time on it.

(Mr. MacNabb:) All we want is a frank statement of what it cost to buy this machinery and put it in position to be of use, not what a fraction of it cost.

(Mr. Howard:) The figures he gives will show the cost.

(By Mr. Howard:)

Q. Can you tell the Commission what was the cost of these different items, taking them as they are listed in that schedule?

(Mr. Robinson:) That don't establish anything. If you are going to take this statement, why put this witness on?

(Mr. Howard:) We want to show what the actual cost was, what those sums were expended for.

(Mr. Price:) Can't you get that from the schedule?

(Mr. Howard:) This is what they cost placed in position. I want to know what is cost to buy them.

(Mr. Robinson:) You don't contend that it is just the cost of them? If you buy a wheel for $25,000 and it costs $35,000 to get it in position to be used, do you contend that it is only worth $25,000 installed?

(Mr. Howard:) You are putting it in extreme form, but I will say yes.

Q. Can you tell the Commission what was the cost of these different items, taking them as they are listed in that schedule, the articles as they were delivered at the plant of the company?

(Mr. Price:) Do you want to change the report that is already in?

(Mr. Howard:) We have a right to change it if there is any mistake in it. The investment figures that you have there relate to the total investment.

[fol. 63] (Mr. Price:) Do you want to go over these items and show how much they cost and how much labor was applied to them? I don't see where that will help us much.

(Mr. Howard:) Take the turbines there; we have in this schedule the total amount invested in them. We want to show what those turbines cost delivered at the plant. We are only going over six or seven of the items, and we don't want to go over a thousand and one items that go to make up this investment.

Q. Did you approve the payments that were made in this case?

A. Each voucher; no, sir.

Q. But the most of them?

A. I approved final payments and the large items.

(Mr. Howard:) If, in cases of this kind, we are required to get the man who knows about each item and check them up in the books of the company, we never could prove anything.

(Mr. Robinson:) What do you want to show by your books?

(Mr. Howard:) We want to show our total investment in accounts that are kept under the regulations of the Public Service Commission. That investment consists of two

kinds of items: the actual cost of the machinery and various other items, including the machinery being fixed so it could be put into operation. We want to segregate those items.

(Mr. Price:) Won't that be a contradiction of the report you have filed?

(Mr. Howard:) What we have filed shows our total investment in these accounts.

(Mr. Weant:) Isn't that the actual cost under the rules of the Public Service Commission, the actual cost of the machinery plus the cost of putting it in or adapting it to its use?

(Mr. Robinson:) If you want to do that, this witness is incompetent; he didn't keep the books and accounts.

[fol. 64] (Mr. Williams:) But he can prove items of cost.

(Mr. Price:) If you are going to fix the value of this machinery at its cost f. o. b. the plant without the cost of erecting it or putting it into position to be used, I will say that we are going to overrule that, and it will save you all that trouble.

(Mr. Howard:) All of these figures here show the total expense. If you build a house and adapt a room for a piece of machinery, you wouldn't say that that expense was a part of the cost of the machinery, rather the value would be in the house as a whole. The cost of the machinery would only be what it cost at the manufacturer's, not what it cost to get it into the house.

(Mr. Weant:) Take an automobile; if you bought the parts and assembled them, would you say that the automobile was only worth what the parts cost?

(Mr. Howard:) If I bought an automobile and had to adapt my garage to receive it, that additional cost would not be added to the value of the automobile. So I contend that the value of this machinery does not include the expense of adapting a place to receive it, putting it in place has not value as personal property.

(Mr. Archer:) There is a distinction between machinery in the cases of Maryland corporations and that of individuals. If this particular class of machinery was put in a building and operated by an individual, the part that was fastened there would be taxed as a part of the real estate, but there is a special act in Maryland that makes the ma-

chinery of corporations, whether fixed or not, taxable as part of the stock.

(Mr. Howard:) As a legal principle, I think that is right, but here there is a difference in the value of the machinery; that is our principal point.

(Mr. Archer:) When we were fixing the value of the real estate, you asked to subtract from the cost of the dam the sum of $8,341,141.43 as being the value of the machinery and could not be taxed as part of the real estate. Now, [fol. 65] when we went to tax the personal property you want to say that a portion of this sum should be taxed elsewhere or not at all.

(Mr. Howard:) We have made no such a request, and it will be proper to argue that point when we argue the principal points of this case.

(Mr. Weant:) What is the purpose of your objection here?

(Mr. Howard:) In assessing this stock, you are confined to the value of the tangible personal property, and we think these other items should not be counted or taken into consideration when you are valuing that property.

(Mr. Weant:) You may go on.

(Mr. Robinson:) We want to reserve an exception to every question.

(Mr. Howard:) I don't think you note exceptions here as you do in cases in Court.

(The Witness:) I am unable to do that without doing a lot of adding of figures, but I have gone over and segregated in each of these items in these subdivisions giving a total investment of about $8,000,000.00, as investment applied to these accounts called equipment accounts, and that includes all of the equipment. I can say that I have examined these accounts and taken out of them the purchase price f. o. b. Conowingo of that which is detachable—secured but capable of being removed from its place without being destroyed or impaired. The sum total of that f. o. b. Conowingo is substantially $5,225,000.00.

Q. That is the cost without any depreciation?

A. That is the purchase price f. o. b. Conowingo.

(Mr. Robinson:) We object to all of this.

(Mr. Weant): Are you reading from a record you made yourself?

[fol. 66] (The Witness:) I examined the records and made this.

(Mr. Robinson:) Did you make that record from the books?

(The Witness:) No, sir—I didn't make it from the books themselves, but from original sources.

(Mr. Robinson:) We make a motion to strike that out.

(Mr. Price:) From what did you make that statement?

(The Witness:) I made it from original sources. By "original sources" I mean a compilation of the cost data secured from Stone and Webster, and Dan Zimmerman, which were the original sources from which the entries in our books were made.

(Mr. Weant:) Give us one of the articles that went into that item you have just given us?

(The Witness:) Transformers——

(Mr. Weant:) They were bought f. o. b. Conowingo?

(The Witness:) Yes, sir.

(Mr. Weant:) What did they cost at the factory?

(The Witness:) I don't know what the freight was, as they were purchased f. o. b. Conowingo. They cost $506,466.00.

(Mr. Weant:) Where did they come from?

(The Witness:) I don't remember now whether it was Pittsfield or Schenectady.

(By Mr. Howard:)

Q. They were sold f. o. b. your power plant?

A. Yes, sir.

(Mr. Robinson:) Where did you get that data?

(The Witness:) I got it from this report.

[fol. 67] (Mr. Robinson:) What is that report?

(The Witness:) It is the cost data of the Conowingo Hydro-Electric Project.

(Mr. Robinson:) Did you get up that book?

(The Witness:) I didn't get up that book.

(Mr. Robinson:) Have you your books with you?

(The Witness:) No, sir.

(Mr. Williams:) He says that he was there four days a week and approved all of these purchases. The law compels you to take this machinery and value it; and, in doing that, you must take into consideration its purchase

price, and the purpose for which it is required. The law says that you must consider what the machinery is worth for the purposes for which it is used; and, in determining that, you must see what is the cost price. How can you do that without considering the cost price, how long it has been there, its depreciation, whether it was specially made for that purpose, whether it can be removed from there, whether it will then have any value—all those are the elements that this Commission must consider if they are to meet the requirements of the law, and take that machinery and put a value on it.

(Mr. Robinson:) Have you any authorities to support that view?

(Mr. Williams:) I don't think I require any authorities for that.

(Mr. Weant:) This is only a question of ability and qualification, is it not?

(Mr. Williams:) Yes, sir.

(Mr. Weant:) Do you really think that this witness is qualified?

(Mr. Williams:) Yes, sir. In some instances he has personal knowledge. He was on the ground when this work [fol. 68] was being done looking over the work of the agent; and he approved various items that were purchased.

(Mr. Howard:) I think that this testimony is admissible. It is a matter that an expert accountant could prove, and we will also offer the books, if they are wanted.

(Mr. MacNabb:) It seems to me that the Power Company is only trying to befog the issue.

(Mr. Howard:) Not at all.

(Mr. Weant:) What do you mean by "spot checking"?

(The Witness:) I mean this by "spot checking"—I have been over these accounts and have examined this report, and I have taken out all items of detachable or removable equipment, have referred to the purchase orders, and have verified the amounts shown and the purchase prices in this book I have checked with the prices shown on the purchase orders. I did not check every item, but I did that in a number of cases, and that is what I call "spot checking".

(Mr. MacNabb:) You checked them in part?

(The Witness:) Yes, sir.

(Mr. Howard): You took a number of the items, check them and found them to be correct?

(The Witness:) Yes, sir.

(Mr. Howard:) Then you presumed that the rest of them were correct?

(The Witness:) Yes, sir.

(Mr. Weant:) Do you want to offer that paper in evidence?

(Mr. Howard:) No, sir—I want to ask the witness some questions about it.

(By Mr. Howard:)

Q. Repeat to the Commission how much of the total ex- [fol. 69] penditure for machinery represents the actual cost of the machinery f. o. b. the plant?

A. It is about $5,225,000.00.

Q. I notice that you said just now that that represented machinery that could be removed under certain circumstances. Make that clearer to the Commission—just what machinery do you mean by that?

A. When I used the word "machinery," I used it in the sense that it excluded from those accounts, called Equipment Accounts, specially provided foundations or specially provided structures not detachable, but in the building—those were included in those accounts. As an illustration, in that classification there are concrete compartments which house separate from each other the high tension switches of 13,000 volts, and also charged in the same account are the oil switches. I excluded from this $5,225,000.00 any special structure, although they were included in that total of the account. I did include the oil switches in that amount.

Q. You say that switches are installed in these concrete compartments?

A. They are a part of the structure——

Q. Part of the dam or the power house?

A. Part of the power house.

Q. They are an actual and concrete part of the power house itself?

A. Yes, sir; it is a part of the building as the building is defined.

Q. Mr. Wilson, take some other instances; take the turbines, you didn't exclude them because they were built in such a way as it would hurt the structure to take them out, did you?

A. There were certain elementary purchases that were made under contract, take the high scroll casing and the special foundation provided where the water wheel runs. I got the manufacturer's value on that, the contract price on that.

(By Mr. Robinson:)

Q. Where is it?

A. I consulted with the manufacturer.

Q. Who was that?

A. Wise and Company.

[fol. 70] Q. You have a written statement from them?

A. No, sir.

Q. You are testifying from some talk you had with the manufacturer?

A. Yes, sir. Do you want me to give my judgment?

Q. I am not asking you to give anything?

A. I formed my judgment after consulting with the manufacturer, and I have had enough experience to know in my own mind whether or not the statement of the manufacturer was correct.

(By Mr. Howard:)

Q. Mr. Wilson, you say that you excluded from this calculation such items as went to make up the cost of foundations in the dam or built to receive this machinery. Will you tell the Commission what other kind of items, if any, you excluded, and explain them?

A. The cost incident to the erection of the equipment, cost of preliminary operation before being placed in service, and——

(Mr. Weant:) Where did you get them?

(The Witness:) I took the purchase price of the equipment and that excluded everything else, including those items we have just talked about.

(By Mr. Robinson:)

Q. Are the items of expense to make the structure ready to receive this machinery kept separate — any other costs on the books of the company?

A. Yes, sir. When you say books of the company, you refer to the accounts as kept by Mr. Sealy. I know that

I have records segregating the costs of these compartments.

Q. Where are they?

A. I have one of the records right here that segregate those items, and I have Stone and Webster's reports; they were the agents on the work and our books are made up from their reports. They did the work, took our money, spent it and told us how they spent it.

Q. Take one of those water wheels: you can say under [fol. 71] oath just what it cost to make the structure to place it in, you can tell us what that expense was?

A. Yes, sir.

Q. Stone and Webster were the contractors on this job?

A. They were our agents.

Q. They didn't build part of that dam, did they?

A. Not by contract——

Q. There was a part of the dam they didn't build, wasn't there?

A. Stone and Webster, Inc., built the power house and a short section of the dam.

Q. Who built the rest of it?

A. The construction agent employed was the Arundel Corporation.

(By Mr. Howard:)

Q. Explain fully to the Commission what items were excluded in arriving at this cost; one of the principal ones was the preparation of the foundations to receive this machinery?

A. I did say that I excluded all the costs incident to the erection of the equipment, expenses of preliminary operation, testing, overhead expenses.

Q. So that this amount of $5,225,000.00 gives us the cost of this machinery as delivered there apart from the various installation costs mentioned?

A. Yes, sir.

Q. Is that machinery standard machinery, or special machinery specially designed for the uses of the company?

A. The water wheels on the main generators are specially designed to meet conditions and head stream flow. The rest of the machinery is more or less standard, although not stock machinery. It was built to order, but is standard of any electrical line.

Q. Is it possible to realize anything on that machinery over and above its f. o. b. cost at the plant—do you understand my question?

A. No, sir.

Q. My question is this: if you had to sell that machinery, would it have any value in excess of its f. o. b. cost at the plant?

A. I should not think so.

Q. Without heeding anything that I may have said, could [fol. 72] you get more or less for this machinery if you had to sell it?

A. I should say less.

Q. Do you know of any second-hand dealer who would have purchased said machinery on January 1st, 1929?

(Mr. Robinson:) We object——

(The Commission:) Objection sustained.

(Mr. Howard:) We note an exception.

Q. I understood you to say that the generators, water wheels and certain other machinery were specially designed for use at Conowingo for the purposes of developing the power of the Susquehanna River?

A. The water wheels on the generators are the only ones specially designed for that site.

Q. You are generally familiar with power development in the United States, are you not?

A. I have had some experience in it. In a general way I am familiar with it.

Q. Do you know of any other power development in this country that could have used those generators and water wheels on January 1st, 1929?

(Mr. Robinson:) We object——

(The Commission:) Objection sustained.

(Mr. Mason:) The point that we are trying to bring out is perfectly proper. It is appropriate the Commission should have before it all the facts concerning the value of this machinery. In endeavoring to arrive at your conclusion in this case you must reach or base your opinion upon something other than the arbitrary amount in the investment account in this particular project. I realize the difficulty in this matter, but you should have before you every possible element of value.

(Mr. Price:) You don't think the Commission is going to value this machinery as junk, do you? We are going to consider it as it is.

(Mr. Howard:) That is all.

[fol. 73] Cross-examination.

(By Mr. Robinson:)

Q. All of these specially made chambers or bases which you have referred to as deducting from the machinery when the question of the assessment of the real estate was up, you claimed that that was a part of the power house, did you not?

A. I am not familiar with that at all.

Q. But they are included in here in the amount given today in the investment account?

A. Yes, sir.

Q. You don't know anything about the fact that when the question of the assessment of the real estate was up it was claimed that machinery to the extent of $8,131,000 should be deducted?

A. I know nothing about the assessment of the real estate.

Q. But you do know what you got out of this book that some one gave you?

A. Yes, sir; and my personal knowledge.

(Mr. Howard:) We want to offer in evidence now a copy of the final lease and the first mortgage of the company. I think that we offered these papers in the other case.

(Mr. Mason:) The copy offered here now is identical with the one filed with and approved by the Public Service Commission of Maryland, and it varies in some particulars with the approved copy that Mr. Robinson had here and from which he examined the other witness. He will see that, in this copy the basis for the rent is not any fixed minimum, but seven per cent on the actual liquidated investment in the project, plus taxes, expenses and depreciation.

(Mr. Price:) That copy does not say what the rent is to be?

(Mr. Mason:) No, sir; not any fixed minimum sum.

(Mr. Howard:) We also wish to offer the Federal franchise in evidence, a copy of this was filed at the time the question of the real estate assessment was up.

[fol. 74] (Mr. Archer:) Does that agreement show that the renting company—the Philadelphia Electric Company or The Susquehanna Power Company pays the taxes?

(Mr. Mason:) The taxes are mentioned in the agreement.

(Mr. Howard:) That is all in the lease.

(Mr. Robinson:) That lease does not agree with the one I have.

(Mr. Mason:) That lease was correct as originally filed, but subsequently it was changed.

(Mr. Archer:) What are fixed charges?

(Mr. Mason): Bond interest and other fixed charges that must come out of the corporate funds before there is any sum available for the stockholders.

(Mr. Howard:) There is no question but that the bond interest is paid out of the rent.

(Mr. Mason:) As I understand it, an impression has been made here that $300,000.00 has been added to the personal property, over above that item filed with this Commission, as a result of Mr. Sealy's testimony. We would like to recall Mr. Sealy.

Thereupon JESSE V. SEALY, a witness of lawful age, who had been previously sworn in this case, was recalled on behalf of The Susquehanna Power Company.

Direct examination.

(By Mr. Mason:)

Q. Mr. Sealy, in an exhibit that was filed before this Commission and is part of the Record in the hearing of the appeal from the assessments by the County Commissioners of Harford and Cecil Counties, there is an item of $8,131,341.43 as being the investment in machinery; and, on page four of that exhibit there is a detailed statement of that item, in which there appears items of administration [fol. 75] expenses and construction fees. Now, in order that there may be no misunderstanding, I will ask you to explain the reason for the difference between that total and

the total that you gave here today for the items of so-called personal property—$7,798,000.00 plus. I will ask you what explanation you have for that difference and whether or not these administration expenses and construction fees, or any proportion of them, are allocated to that item as it appears in this exhibit, or to any other items on the report filed with this Commission?

(Mr. Robinson:) That is a long question.

(Mr. Howard:) We are only asking him to explain that difference of $300,000.00.

A. I will attempt to answer the question as I understand it. The figures shown in the exhibit filed with the State Tax Commission are based on our investment in fixed capital as of September 30th, 1928—that shows equipment items of $8,131,341.43 and that figure includes approximately $600,000.00 for construction fees and administration expenses—fees paid to Stone and Webster and Dan Zimmerman—paid to them under their contracts.

Q. Their fees were $600,000.00, and a portion of those fees were included in this item of $8,131,341.43?

A. The amount of $8,131,341.43 includes the construction fees and administration expenses—the proportion chargeable to these accounts. Now the figures for equipment items as of December 31st, 1928—$7,800,000.00 in round figures—does not include anything for construction fees or administration expenses. These items are not included in the statement to the State Tax Commission in the part marked Schedule Two; but they are included in the items of engineering, superintendence during construction, general office expenses, clerical salaries, etc., and certain other overhead items. The figures of $8,131,341.43, as of September 30th, 1928, included approximately $600,000.00 of construction fees and administration expenses, leaving an approximate investment of $7,500,000.00 in the equipment items; and, by December 31st, 1928, these [fol. 76] same accounts had increased to approximately $7,800,000.00.

(Mr. MacNabb:) That does not contain any construction fees or administration expenses?

(The Witness:) That is right.

(Mr. Price:) There is a difference between the September and December items?

(The Witness:) A different type of exhibit was prepared in December.

(Mr. Price:) And the same item don't mean the same thing in December—you took $600,000.00 out of it in December?

(The Witness:) I didn't take it out—it is here in September and December, too. I added something to it in December. This one was filed on September 30th, 1928, and later the different expenses were added to it.

(Mr. MacNabb:) What was your investment in these accounts as of September 30th, 1928?

(The Witness:) It was $7,531,341.00.

(Mr. MacNabb:) Those are not the figures here?

(The Witness:) The figures given on September 30th, 1928, include approximately $600,000.00 in construction fees and administration expenses.

(Mr. MacNabb:) Show us what you mean by that?

(The Witness:) Our investment in the equipment accounts on September 30th, 1928, was $7,531,341.00. Now, between September and December that increased about $300,000.00; and our investment in equipment accounts as of December 31st, 1928, was $7,798,000.00 in round figures.

(Mr. Robinson:) You spoke of a $600,000.00 item?

[fol. 77] (The Witness:) That is the sum of the items.

(Mr. Robinson:) Where did you get that?

(The Witness:) The $600,000.00 is a proportion of the fees paid to Stone and Webster, and Dan Zimmerman for the construction of the plant—for their work in connection with the supervision of the project—that sum is the proportion of those fees and general office expenses applicable to equipment.

(Mr. Robinson:) Did you give us the time taken to place the machinery in position, or did you just figure on the contract price of the items?

(The Witness:) That was the sum of money that was paid under the general contract to Stone and Webster, and Dan Zimmerman, for which certain things were done. I took into consideration the cost of these items and the cost of the entire job, and that ratio of the construction fees was added here.

(Mr. Robinson:) Would the machinery be of any use without the expenditure of the money to place it in position to operate?

(The Witness:) It would be useless until it was placed in position to operate.

(Mr. Robinson:) How could you operate the plant without the expenditure of this $600,000 that was allocated to this necessary work?

(The Witness:) That is what was paid to Stone and Webster and Ben Zimmerman.

(Mr. Robinson:) But it was necessary to expend this sum of $600,000 in order to get the plant operating?

(The Witness:) Yes, sir.

(Mr. Robinson:) Without that work you couldn't have operated the plant effectively, would you?

[fol. 78] (The Witness:) I don't think I am qualified to testify about the proper operation of machinery.

(Mr. Robinson:) Now, you have made a statement that, as of September 30th, 1928, your investment in turbines, water wheels, generators, etc., was $8,131,341.43. How much had been added to that as of December 31st, 1928?

(The Witness:) I will have to make a calculation and build up some kind of a figure.

(Mr. Robinson:) It was more than that, wasn't it?

(The Witness:) The investment in the equipment account increased between that date and December 31st approximately $300,000.

(Mr. Robinson:) How much did you pay Stone and Webster and Dan Zimmerman during that period?

(The Witness:) I don't know how much was paid those parties during that period.

(Mr. Robinson:) This increase would run it up to about $9,000,000, wouldn't it?

(The Witness:) I don't know.

(Mr. Weant:) As you are the bookkeeper, what did your books show as of December 31st, 1928 was the value of this stock?

(The Witness:) Our books showed a book value.

(Mr. Weant:) Of how much?

(The Witness:) It was $4,866,886.36.

(Mr. Weant:) As you have 245,300 shares that makes the value of a share about $20?

(The Witness:) I didn't calculate it.

(Mr. Weant:) You have it on your books as of some value?

[fol. 79] (The Witness:) We carry it at that value.

(Mr. Howard:) That includes the real estate value?

(The Witness:) Yes, sir.

(Mr. Mason:) The report filed with the Commission as of January 1st, 1929, shows a book value on the stock at the rate of $19.43 per share, and that appears to be the only value given it. Under the circumstances, with the assessment of the real estate, there is no taxable value against the shares for the individual shareholders.

(Mr. Howard:) That is all the testimony we have.

(Testimony of witness concluded.)

(Testimony closed.)

IN CIRCUIT COURT OF HARFORD COUNTY

MOTION TO DISMISS APPEAL—Filed January 10, 1930

To the Honorable the Judges of Said Court:

The State Tax Commission of Maryland, appellee in the above entitled case, moves the Court to dismiss the appeal therein, for the following reasons:

(1) Because as set forth in the petition of The Susquehanna Power Company for the appeal in this case, it is claimed that the Commission arrived at an assessment greatly in excess of the true assessable value of said shares of stock, and that no appeal can be taken to this Court from the action of the State Tax Commission on the value of said capital stock, but that under the provisions of Section 170 of Article 81 of the Code of Public General Laws of Maryland the only appeal from such valuation is to the Comptroller of the Treasury and State Treasurer, and that their decision in the matter is final if affirmed, and that this Court has no jurisdiction to hear the appeal as to the value of said shares.

[fol. 80] (2) Because in determining the value of said shares for the purpose of assessment there is no evidence

in this case that the State Tax Commission adopted the minimum rule referred to in Section 163 of Article 81 of the Code of the General Laws of Maryland.

(3) Because there is no law in Maryland providing for the assessment of personal property or machinery of a corporation upon the theory set forth in the First Prayer of the petition for appeal in this case.

(4) Because there is no evidence in this case that the State Tax Commission attempted to value the franchise rights of The Susquehanna Power Company granted to it under the license from the Federal Power Commission.

And for other reasons to be made known at the hearing of this motion.

Thos. H. Robinson, R. H. Archer, Chas. H. MacNabb,
Attys. for Defendant.

IN CIRCUIT COURT OF HARFORD COUNTY

PETITION FOR REHEARING OF THE SUSQUEHANNA POWER COMPANY—Filed January 14, 1930

To the Honorable the Judges of said Court:

The petition of The Susquehanna Power Company, appellant in the above entitled cause, respectfully shows:

I

That heretofore on the 10th day of the present month the said appeal and the several questions involved therein under the protest of your petitioner, the petition for appeal and the rulings requested of the State Tax Commission were heard by your Honor and held under advisement.

[fol. 81] II

That under said appeal there is involved important Federal questions, and inter alia the power of the State of Maryland to tax the non-resident owner of stock of a Maryland corporation, as will appear by reference to said protest petition and request for rulings.

III

That since the date of said hearing, your petitioner has ascertained that on the 6th day of January, the Supreme Court of the United States handed down an opinion entitled Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, against the State of Minnesota, whereby the case of Blackstone vs. Miller, 188 U. S. at 189, was definitely overruled, and that said case was cited and relied upon by the appellees in the case of Corry vs. Baltimore, 196 U. S. at 466, which was an appeal from the Court of Appeals of Maryland, 96 Md. at 310.

IV

Your petitioner shows that the effect of overruling the said case of Blackstone vs. Miller, supra, is to overrule the said case of Corry vs. Baltimore, and thereby to support the contentions of your petitioner in the instant case, and see also the supporting case of Safe Deposit & Trust Company of Baltimore vs. Virginia, 280 U. S. 83 (November 25th, 1929).

V

Your petitioner filed herewith a copy of the United States Daily, dated January 8th, 1930, a newspaper published in Washington City, containing a full and complete text of the opinion in said Taylor case, and prays that the same may be taken as a part of this petition.

VI

Your petitioner therefore prays that it may have a rehearing in the aforesaid cause, so that the legal effect of the said Taylor case, in support of the contentions of the peti- [fol. 82] tioner in the instant case, with reference to the Federal questions involved, may be fully argued and considered.

And for all such other and further relief as your petitioner's case may require.

Chas. McH. Howard, S. A. & F. R. Williams, Attorneys for Petitioner.

The exhibit filed January 14th, 1930, with the aforegoing petition of The Susquehanna Power Company, being a copy of the opinion of the Supreme Court of the United States of January 6th, 1930, in the case of the Farmers Loan and Trust Company, executor of Henry R. Taylor, vs. the State of Minnesota, is omitted from this transcript, and in lieu thereof reference is made to said case and opinion as reported.

In Circuit Court of Harford County

Order Granting Rehearing—Filed January 18, 1930

Upon the aforegoing petition and exhibit it is ordered this 18th day of January, in the year 1930, that a rehearing be granted as prayed in said petition, and upon notice of such rehearing being given the appellant, the questions involved in said appeal were submitted by the counsel for the appellant on the arguments heretofore made, together with that contained in the exhibit filed with said petition, with leave to the appellee to make such reply thereto as it may deem proper.

Walter W. Preston.

[fol. 83] In Circuit Court of Harford County

Judgment—Filed January 20, 1930

The appeal of The Susquehanna Power Company from the assessment on the capital stock of The Susquehanna Power Company, a Maryland corporation, having been argued by the counsel for the appellant and the appellee, and submitted, and the papers in said case having been duly read and considered.

It is thereupon this 20th day of January, 1930, by the Circuit Court for Harford County adjudged and ordered that the order of the State Tax Commission fixing the value for the purposes of assessment of the capital stock of said corporation be and the same is hereby affirmed.

And it is further ordered that the motion of the State Tax Commission to dismiss the said appeal be and the same is hereby overruled.

Walter W. Preston.

In Circuit Court of Harford County

Bill of Exceptions and Order Settling Same—Filed January 25, 1930.

This appeal came on to be heard before said Court on the 10th day of January, 1930, and the Court had before it the transcript of the Record including the reports of The Susquehanna Power Company to the State Tax Commission of Maryland, January 1st, 1927, and 1929, and the assessment of said Commission and the questions involved in the protest to said Commission of said Power Company, its petition for appeal, requests for rulings and order of said Commission. After oral argument by counsel for the respective parties, and pending said Court's decision on said appeal, the said Power Company filed, on January 18th, 1930, its petition for a rehearing, with its exhibit to said petition, and thereafter on said 18th day of January, 1930, said [fol. 84] Court, by its order, granted a rehearing on said petition and exhibit, and the questions involved in said appeal were submitted on the arguments theretofore made, and on said opinion and exhibit with leave to appellee to reply thereto.

And thereafter on the 20th day of January, 1930, on submission by appellant and appellee, and on consideration of the papers in said appeal, the said Court by its order affirmed the order of said Commission, fixing the value for purposes of assessment of the capital stock of said Power Company, whereupon said Power Company excepted to the said ruling and order of said Court and prayed said Court to sign and seal this, its Bill of Exceptions which is accordingly done this 25th day of January, 1930.

Walter W. Preston. (Seal.)

IN CIRCUIT COURT OF HARFORD COUNTY

NOTE OF APPEAL TO THE COURT OF APPEALS OF MARYLAND AND AFFIDAVIT—Filed January 24, 1930

Mr. D. G. Wilson, Clerk of said Court:

Enter an appeal to the Court of Maryland from the order of said Court, dated the 20th day of January, 1930, affirming the order of the State Tax Commission, fixing the value for the purposes of assessment of the capital stock of said Power Company.

Chas. McH. Howard, S. A. & F. R. Williams, Attorneys for the Susquehanna Power Company, Appellant.

STATE OF MARYLAND,
Harford County, set:

I Hereby Certify, That on this 24th day of January, 1930, before me, the subscriber, a Notary Public of the State of [fol. 85] Maryland, in and for Harford County, duly commissioned and qualified and residing at Bel Air, personally appeared the above named Stevenson A. Williams, Director of The Susquehanna Power Company, and made oath in the presence of Almighty God that the appeal from said order to the Court of Appeals of Maryland is not taken for delay.

As Witness my hand and Notarial Seal.

Lucille Gray, Notary Public. (Notarial Seal.).

[fol. 86] IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

General Docket No. 39

THE SUSQUEHANNA POWER COMPANY

vs.

THE STATE TAX COMMISSION OF MARYLAND

Appeal from the Circuit Court for Harford County

NOTICE OF APPEAL—Filed Aug. 1, 1930

To the State Tax Commission and Thomas H. Robinson, Attorney General of Maryland, Robert H. Archer, Assistant Attorney General of Maryland, and Charles H. MacNabb, Attorneys for the said Appellee, The State Tax Commission of Maryland:

This is to notify you that the Appellant will require the Clerk of the Court of Appeals of Maryland to duly certify

to the Clerk of the Supreme Court of the United States the entire printed record in said suit, and all proceedings in said suit subsequent to the filing of said record in said Court of Appeals, and also the original citation, giving notice to the Appellee of the allowance of said appeal.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for the Appellant.

Service of the above notice and præcipe admitted this 1st. day of August, 1930.

Thomas H. Robinson, Robert H. Archer.

[fol. 87] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

PETITION FOR APPEAL—Filed July 10, 1930

To the Honorable, Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland:

The Petition of The Susquehanna Power Company, Appellant, in this Court, and Petitioner and Appellant in the Circuit Court for Harford County, from a decision and Order of the State Tax Commission of Maryland, in the matter of the assessment for taxation of the capital stock of the said The Susquehanna Power Company, respectfully shows:

I

That as fully appears from the record in this cause, this cause is and was in the Circuit Court for Harford County, in which County the principal office of your Petitioner is located, and in the Court of Appeals of Maryland, a suit wherein was drawn in question, the validity of certain Statutes of the State of Maryland, namely, Statutes relating to the State Tax Commission of Maryland, and certain Orders of the said State Tax Commission purporting to have been made in pursuance of said Statutes, on the ground that said Statutes, including said decision and Orders, were and are repugnant to the Constitution of the United States,

and the final judgment of the Court of Appeals of Maryland made and entered in said cause on the 12th day of June, 1930, was and is a decision in favor of the validity of said Statutes, including said Orders made pursuant to [fol. 88] the authority thereof.

II

Your Petitioner for the reasons specified in the Assignment of Errors, which is filed herewith, conceives itself aggrieved by said final judgment made and entered by the Court of Appeals on June 12th, 1930.

Wherefore your Petitioner prays that an appeal may be allowed herein from the Court of Appeals of Maryland to the Supreme Court of the United States, and that an Order may be passed fixing the amount of the bond on said appeal.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

[fols. 89 & 89½] In Court of Appeals of Maryland

[Title omitted]

Order Allowing Appeal—July 10, 1930

And now to wit on July 10 1930, it is ordered that an appeal from the Court of Appeals of Maryland to the Supreme Court of the United States be allowed as prayed, upon the filing of a bond in the sum of One hundred and three thousand dollars ($103,000.00), with good and sufficient security, and that the United States Fidelity and Guarantee Company, a Maryland Corporation, is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland.

[fol. 90] In Court of Appeals of Maryland

[Title omitted]

Assignment of Errors—Filed July 10, 1930

And now comes The Susquehanna Power Company, a body corporate, Appellant in the above entitled cause, in the

Court of Appeals of Maryland, Petitioner and Appellant in the Circuit Court for Harford County, and for its Assignment of Errors shows:

I

That the Court of Appeals of Maryland erred in not reversing the judgment of the Circuit Court for Harford County, dated January 20, 1930, affirming the Order of the State Tax Commission of Maryland, dated December 18, 1929, assessing the capital stock of the said Appellant for taxation, because the owner of said capital stock is a resident of the State of Pennsylvania, where the said stock is taxable, and the assessment thereof in the State of Maryland is double taxation, depriving the Appellant and the owner of said stock, of their property without due process of law, contrary to the Constitution of the United States and the Fourteenth Amendment thereof.

II

That the Court of Appeals of Maryland erred in not holding void the provision of Section 163 of Article 81 of the Public General Laws of Maryland requiring that in no case shall the capital stock of any corporation (such as the appellant,) in the aggregate, be valued for tax purposes at [fols. 91 & 91½] less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation; and in approving the arbitrary assessment of said stock made pursuant to said statute at more than the fair value thereof and thereby depriving said owner and said Appellant of their and its property without due process of law in contravention of the Constitution of the United States and of the Fourteenth Amendment thereof.

III

That the Court of Appeals of Maryland erred in not holding that no value can be given to the capital stock of the Appellant in excess of the value of the real estate and chattels, real or personal, for assessment, because such excess would include in such assessment the value of the franchise rights of the corporation granted to it under the License of the Federal Power Commission and such value is not subject to assessment for taxation by the State of Maryland

or any political subdivision thereof, because Appellant under said license is a Federal Agent or instrumentality to improve navigation upon a navigable river, which is a highway of Interstate Commerce.

Wherefore the Appellant and Petitioner prays that the said judgment of the Court of Appeals of Maryland made and entered on the 12th day of June, 1930, be reversed, and the said Court may be directed to enter a judgment in favor of the Appellant and Petitioner.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

[fol. 92] Bond on Appeal for $500.00, approved and filed July 10, 1930, omitted in printing.

[fol. 93] Citation, in usual form showing service on Thos. H. Robinson et al., filed July 15, 1930, omitted in printing.

[fol. 94] In Court of Appeals of Maryland

[Title omitted]

Docket Entries

Appeal from the Circuit Court for Harford County.
Filed March 21st, 1930.
June 12th, 1930, Order affirmed with costs.
Opinion filed. Op.—Offutt, J. To be reported.
July 10th, Petition for appeal to United States Supreme Court filed.
July 16th, 1930, Petition of Supersedeas filed, and served on State Tax Commission of Maryland.

Bill of costs omitted in printing.
Clerk's certificate to foregoing paper omitted in printing.

[fol. 95] IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

No. 39

THE SUSQUEHANNA POWER COMPANY

vs.

THE STATE TAX COMMISSION OF MARYLAND

OPINION—Filed June 12, 1930

Judge OFFUTT delivered the Opinion of the Court.

[fol. 96] On October 10th, 1929, the State Tax Commission of Maryland assessed the capital stock of the Susquehanna Power Company, a Maryland Corporation at $6,000,000; and on October 11th notified it that the assessment would become final unless cause to the contrary were shown within fifteen days from that date. On October 23d 1929, the Company filed a protest, which was heard on November 8th. After that hearing on December 18th, 1929, the assessment was made final, and on or about January 2nd, 1930, the Company filed in the Circuit Court for Harford County, a petition in the nature of an appeal from the action of the Commission, and on January 3rd, 1930 addressed a similar petition to the Comptroller of the Treasury and the Treasurer of Maryland. The latter appeal has not apparently been considered, but the appeal to the Circuit Court for Harford County was in due course heard and on January 20th, 1930 by an order of that court the assessment made by the State Tax Commission was affirmed. From that order the Company has appealed to this Court.

The questions raised by the appeal are (1) whether an appeal lay from the action of the State Tax Commission to [fol. 97] the Circuit Court for Harford County, (2) whether the Commission erroneously included in its valuation of the Company's machinery in its power house and dam "the cost of adapting such power house and dam to receive the same", (3) whether a provision contained in Code (1924) Art 81 sec. 163 that in no case shall the stock of a corporation such as the appellant be valued in the aggregate for assessment at less than the full value of the real estate and chattels real or personal is repugnant to Articles 15 and

23 of the Maryland Bill of Rights and to the Fourteenth Amendment to the Constitution of the United States and therefore void, (4) whether any valuation of the capital stock of the Company in excess of the value of its real property and chattels real and personal must necessarily include the value of its "franchise rights" granted under a license from the Federal Power Commission and is void, and (5) whether as its stock is owned by a non resident it is taxable in Maryland.

In view of the decision in B & P Steamboat Co. vs. State Tax Com. 157 Md. 282, and Fidelity Trust Co. vs. Gorman 134 Md. 338, there can be no possible doubt as to the right of the Company to appeal on any question of law from the action of the State Tax Commission to the Circuit Court for [fol. 98] Harford County. The appellee moved to dismiss the appeal in the lower court on the ground that as Code Art 81, sec. 170 allowed an appeal to the Comptroller of the Treasury and the Treasurer that that right was exclusive. But that statute was in force when the cases cited were decided, and it must be assumed that in deciding that an appeal lay also to the Courts on questions of law, under secs. 253, 259, Art. 81 Code Vol. 3, it was considered that the right to appeal to court and the right to appeal to the Comptroller and the Treasurer were cumulative and not exclusive remedies. The reason for that conclusion becomes apparent when the two remedies are compared. The appeal to Court being upon questions of law only was designed to secure to the taxpayer the privilege of having the decisions of the Commission on such matters reviewed by the only agency competent to deal with them. While the appeal to the Comptroller and Treasurer gave to him the privilege of having the judgment of the Commission on questions of fact reviewed by a Board of two laymen, fiscal officials, who by the nature of their offices were qualified to decide such questions.

Broadly stated, the next point presented by the appeal is that the Commission erred (1) in its rulings on the prayers or instructions submitted by appellant, and (2) that [fol. 99] it erred in failing to state the reasons which influenced it in valuing appellant's stock, and that these errors invalidated the assessment which it imposed on such stock.

Taking the second of these questions it cannot be fairly said that the Commission failed to state the reasons which affected its action. For when Mr. Howard, of counsel for the Company suggested at the hearing "we would know better how to proceed if the Commission would give us some idea how they arrived at this tentative value of $6,000,000," the chairman of the Commission replied "We made the assessment in accordance with the law. The three elements mentioned by the law-market value of the stock, net earnings and net assets, were taken into consideration". It is true that after the Chairman had made that statement, the Attorney General stated that the Commissioners "did not have to tell how they did their work". We do not agree with that statement, and in our opinion the law is otherwise. The Commission was an administrative fact finding board, created by statute with such powers and only such powers as the statute gave it. It was neither above nor beyond the law, and when its conclusions were challenged in some appropriate and orderly manner sanctioned by law, it was bound to justify them by showing that they had a legal basis. It had no more right to assess prop- [fol. 100] erty by fiat, and without regard to its actual worth, than it had to bodily appropriate the private property of the citizen to the use of the state. Its tentative assessment had been made without consulting the taxpayer, and without notice to him, and while ordinarily and in the absence of any direct attack its action will be presumed to be correct, Cooley on Taxation sec. 1073, when it is directly attacked, justice requires that the assessors should be required on demand of the taxpayer to state the basis of the assessment. In Consol. Gas Co. vs. Balto. City 105 Md. 52, this court said:— "The appellees have cited in their brief numerous, respectable and eminent authorities from other jurisdictions to sustain the proposition that the method of assessors in arriving at their conclusions is a matter absolutely committed to their discretion, and that the members of such a tribunal cannot be put upon the stand to testify as to the operation of their minds in doing the work entrusted to them, and many of those authorities are collected in 27 Amer. & Eng. Ency. of Law, 2nd ed. page 689.

After careful consideration of these authorities however, and with due respect to the eminent Courts by which they

are announced, we do not think the law can be so declared in this State.

No proceeding more closely analogous to the present can [fol. 101] be found, than that employed in condemning land under the principle of eminent domain and in such cases ever since the case of Tide Water Canal Co. v. Archer, 9 G. & J. 317, the practice in Maryland has allowed the examination of jurors, who signed the inquisition as witnesses, on return of such inquisition for confirmation, 'upon all subjects whatever relating to the controversy, as fully as any other persons who might be sworn as witnesses in the cause, that they may be examined as to the grounds and motives for their finding, in order to ascertain whether in coming to their conclusions they had not mistaken facts as well as the law'." And while that case dealt with the examination of the assessors in the Circuit Court on appeal, its reasoning applies as well to a proceeding before the assessors themselves. For unless the taxpayer is permitted to ascertain from that source what basis there was for the assessment, he would be at the mercy of the uncontrolled discretion of the Commission, since he could obtain it from no other source, as the members of the Commission cannot under the present procedure be examined in court. Fidelity Trust Co. vs. Gorman 134 Md. 340.

But conceding so much, the objection is without point in this case, for as we have stated the Commission did give its reasons for the assessment it made, and those reasons were [fol. 102] rational, sufficient and legal, and we find no support for the statement that the Commission "refused, though repeatedly requested to do so, to give any reasons, or indicate in any way by what process their 'tentative assessment' was arrived at". Had the appellant desired any more detailed or specific statement than that given, it could have applied for it by addressing appropriate questions designed to elicit it, to the Commission. But having failed to do that it cannot now complain that questions which it failed to ask were not answered.

The next objection is that the Commission erred in its rulings on the instructions submitted by the appellant. The first answer to that objection so far as it relates to the first, fourth and fifth instructions, is that they are mere legal abstractions which are not shown to have any

relation to the action of the Commission or the evidence before it. The first instruction stated as a matter of law that "the turbine wheels, dynamos and other machinery installed by said company in its power house and dam on the Susquehanna River, in Harford County, should be valued at their full value as machinery, without including in such valuation the cost and expense of installing the same or of adapting said power house and dam to receive the same." Its fourth announced that so much of Code [fol. 103] Art 81 sec. 163 as declared that "in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation", was void as in conflict with Article XV and XXIII of the Declaration of Rights of Maryland Constitution, as well as with the Fourteenth Amendment of the Federal Constitution.

But there is nothing in the record from which it can be inferred that the Commission included in the value of appellant's machinery the expense of installing the same or of adapting the power house and dam to receive it. Moreover assuming that the cost of adapting the power house and dam to receive the machinery, could not be included in the valuation of the machinery, the first instruction further stated that the expense of installing it should not be included in such valuation, and in that it went too far. The value of chattels of that character includes as one of its elements, the expense of fitting it for the owners uses. And if such expenditure give the chattel an added intrinsic value, it should be considered in any valuation of it. And if, in considering that element of value the Commission erred its error was one of judgment which the Circuit court was not authorized to review. M. & C. C. of Baltimore vs. C. & P. Tel. Co., 131 Md. 55.

[fol. 104] The fourth and fifth instructions presented the proposition that the mandate in sec. 163 Article 81 Code that in no case shall the stock of a corporation in the aggregate be valued at less than the full value of the real estate and chattels held by or belonging to such corporation is unconstitutional. But in view of the express declaration of the Chairman of the Commission that in valuing the stock the Commissioner considered the "net" assets of the corpora-

tion, it cannot be assumed that its action was affected by that mandate, nor does it appear that the assessment was in fact higher than the fair value of the stock assessed. If the provision is given the construction asserted by the appellant that it results in double taxation, there would be more force in its argument that it is repugnant to both the State and Federal constitutions and void. But in our opinion the provision cannot reasonably be given any such construction. Mortgaged real estate is taxable to the mortgagor at its actual assessed value without respect to the mortgage lien. Allen vs. Harford County 74 Md. 294, and mortgaged chattels are assessable to the mortgagor in possession without deduction of the amount of the debt, Fields vs. Russell 17 Pac. (Kansas) 476. There is in this State no direct tax on the personal property of the corporation, Code Art. 81 sec. 163, and the value of the real estate upon which there is a direct tax, is deducted from the aggregate value of both its [fol. 105] real and personal property before its stock is finally valued for assessment. So that the final assessment of the shares in so far as it represents tangible property includes no part of the value of the real estate but is based upon the value of the personal property alone, and the situation is not materially different from what it was in 1874 when that provision first found its way into the law. As the law then stood the property of corporations was assessed indirectly through their stock, and the provision meant no more than saying that their holdings of real and personal property, should be assessed to the owners thereof without regard to liens or incumbrances. And while the law has been changed so as to permit the direct taxation of real property held by corporations, the change did not invalidate that provision, because under the amended law the value of the real property was excluded for the valuation of its stock, and that valuation represented only the tangible and intangible personal property of the corporation, without regard to any liens thereon. And since it could have taxed such property directly without reference to such liens there is no valid reason why it may not be taxed indirectly through appellant's capital stock, on an assessment made without reference to liens or debts, for in neither case would the corporation be called upon to pay taxes upon more than [fol. 106] the assessable value of its property. And there

is no possible basis for the contention that the method adopted subjects any of the corporate property to double taxation. For under it the realty is subjected only to direct taxation, and the personal property only to indirect taxation, based in both instances on the fair value of the property taxed.

The third instruction announces that "the valuation of the Company's turbines, dynamos and other machinery constituting an essential part of its power development or unit, constructed and operated under its license from the Federal Government, and therefore exempt from taxation by the State, should be deducted or not included in such assessment or valuation." The controlling principle in that proposition is that appellant's pool, dam and power house are dedicated to a Federal use and therefore exempt from taxation. That contention was considered and rejected in Susquehanna Power Co. vs. State Tax Com. No. 38 of the April Term of this court, and for the reasons stated in the opinion in that case, this instruction was properly refused.

Appellant's sixth instruction stated that any valuation of its stock must necessarily include the "value of the franchise rights" granted under the license of the Federal [fol. 107] Power Commission, and that such value is not taxable. The license itself is of course exempt from state taxation. But that exemption does not extend to property owned and used by the licensee, unless the tax would interfere with its performance of some Federal duty or function. Susquehanna Power Co. vs. State Tax Com. supra. And while it may be assumed that the appellant could not operate its project without the license, nevertheless it may be valued and assessed without including the actual value of the license, just as the property of a manufacturing or mercantile establishment may be taxed and assessed without including in the valuation the value of the license which enables it to operate. For the property of the corporation is separate and distinct from its right to operate or to use its property in a specific way. McCulloch vs. Maryland 4 Wheat. 416, Union Pac. R. R. Co. vs. Peniston 18 Wal., 5, Thomson vs. Union Pac. R. R. Co. 9 Wal.; State vs. Thomas Cruse Sav. Bk. 45 L. R. A. 766. And since the instruction failed to make the alleged exemption contingent upon the fact that any assessment of the

property would interfere with its performance of some federal function or duty validly imposed upon it, it was defective.

The remaining contention is that as all of appellant's stock is held by the Philadelphia Electric Company, a non [fol. 108] resident corporation it cannot be taxed at all in this state. The stock was assessed to the non resident at appellant's principal office in Bel Air, Harford County, Maryland, under the authority of Code Art. 81 sec. 154 and the appellant is required to pay all taxes levied thereon. Ibid secs. 163, 166, 166 A. The objection therefore goes beyond the immediate assessment and reaches the statutes under the authority of which it was made. The effect of those statutes was to fix the situs of stock in a Maryland corporation held by a non resident, in the county or city where such corporation was situated, to impose upon the corporation an obligation to pay any valid tax levied thereon, and to authorize it to charge such payment to the account of the stockholder, and such was the law not only at the time the Company was incorporated, but at the time Corry vs. Baltimore City infra was decided, Acts 1896 Ch. 120 sec. 141. The question therefore falls precisely within the decision of this court in Corry vs. Baltimore City 96 Md. 310 in 1903, and of the Supreme Court in Corry vs. Baltimore 196 U. S. 465 decided in 1905, and Hannis Dist. Co. vs. Baltimore 216 U. S. 285 decided in 1910, in which the validity of those statutes was established. But it is asserted that the Supreme Court in two recent cases, Safe Deposit Co. vs. Virginia 280 U. S. 83, and Farmer's Loan and Trust Co. vs. Minnesota 280 U. S. 204, has rendered the [fol. 109] authority of the Corry case doubtful. But after a careful examination of those cases we are unable to agree with that conclusion. The Court in the Virginia case was called upon to determine whether securities, stocks and bonds, held in Maryland by a trustee domiciled there for the eventual use of persons domiciled in Virginia, and which were properly taxed in Maryland, were also taxable in Virginia, and it was held that they were not because they had acquired a "situs separate from that of the beneficial owners". In the Minnesota case the court was dealing with the right of that state to impose a death tax on negotiable bonds and certificates of indebtedness issued by the State

of Minnesota and the cities of Minneapolis and St. Paul but owned by a person domiciled in the State of New York and held in that state. He died testate, his will was probated in New York, his estate was administered there, and there a testamentary transfer tax was paid on these securities. Minnesota imposed a similar tax on the same securities, and the question presented was whether it had the power to do that. It was held that it had not, apparently upon the theory that the bonds were choses in action, and that their situs was fixed at the domicile of the decedent who held them at the time of his death. Neither of those decisions involved the questions presented here and decided in Corry vs. Baltimore supra, which are (1) that a state may [fol. 110] determine the situs of stock issued by a corporation chartered by it and owned by non residents, where the legislation effecting that result was in existence at the time the charter was granted, and (2) that as an incident of that power it may require the corporation to pay the tax, and (3) may authorize it to charge such payment to the account of the stockholder.

Nor are the reasons which led the court in the Minnesota case to overrule Blackstone vs. Miller 188 U. S. 189 present in this case, but on the contrary if judicial decisions are to be controlled by the changing demands of trade and commerce and considerations of public policy, such considerations inevitably demonstrate the wisdom of the conclusion reached in Corry vs. Baltimore supra. There is no question of double taxation presented here, but the essential question is whether the stock is to escape taxation altogether in the state where the tangible property which it represents is situated.

The only remaining question is whether there is anything in the nature of the assessment itself or apparent on the face of the record which can justify the inference that the assessment was not fairly and justly made. In the absence of any showing to the contrary it will be presumed that [fols. 111 & 112] members of the Commission acted fairly and in good faith, and that the assessment is correct. Cooley on Taxation secs. 1073, 1011. And the record contains nothing which can affect that presumption. It is undisputed that the fixed investment of the Company in Maryland is $45,677,316.90. The aggregate assessment made by the Com-

mission was $28,726,132 and from that the amount of the assessment of the real estate $22,726,132 was deducted leaving a balance of $6,000,000 which was allocated to the stock. There is no contention in this case that the aggregate assessment is excessive, or that the valuation of the real estate as such was unreasonable, and we can find nothing in these findings which were based upon information furnished by the Company, or elsewhere in the record, which affects the validity of the assessment which is the subject of this appeal, and the order appealed from will therefore be affirmed.

Order affirmed with costs.

[fol. 113] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Aug. 21, 1930

The above named Appellant hereby states its points to be relied upon, and its designation of the parts of the record to be printed, as follows, that is to say:

A

Points upon which it intends to rely:—

Point 1. That said Court of Appeals of Maryland erred in not reversing the judgment of the Circuit Court for Harford County, dated the 20th day of January 1930, which affirmed the Order of the State Tax Commission of Maryland, dated the 18th day of December, 1929, assessing the capital stock of said Appellant for taxation, because the owner of said capital stock is a resident of the State of Pennsylvania, where the said stock is taxable, and the assessment thereof in the State of Maryland is double taxation, depriving Appellant and the owner of said stock of their property without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

Point 2. That said Court of Appeals of Maryland erred in not holding void the provision of Section 163 of Article 81 of the Public General Laws of Maryland (1924) requir-

ing that in no case shall the capital stock of any corporation (such as the Appellant), in the aggregate, be valued for [fol. 114] tax purposes at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation, and in approving the arbitrary assessment of said capital stock made pursuant to said Statute, at more than the fair value thereof, and thereby depriving said owner and said Appellant of their and its property, without due process of law, in contravention of the Constitution of the United States and of the Fourteenth Amendment thereof.

Point 3. That said Court of Appeals of Maryland erred in not holding that no value can be given to the capital stock of said Appellant in excess of the value of the real estate and chattels, real or personal, for assessment, because such excess would include in such assessment the value of the franchise rights of the corporation, granted to it under the license of the Federal Power Commission, and such value is not subject to assessment for taxation by the State of Maryland, or any political subdivision thereof, because said Appellant under said license is a Federal Agent and instrumentality to improve the navigation upon a navigable river, which is a highway of interstate commerce.

B

Parts of the record as filed in this Court, which it hereby designates as necessary to be printed by the Clerk, for the consideration of said points and the hearing of the above entitled case.

No.	Titles of the Parts of the Record	Record page
1.	Appellant's capital stock report to the State Tax Commission, and ownership of all the capital stock of Appellant by Philadelphia Electric Power Company, a corporation of Pennsylvania	32–38
2.	Tentative assessment by State Tax Commission of all the capital stock of said Appellant against the Appellant, to be charged up against the non-resident owner	20
3.	Protest of said Appellant against said tentative assessment	21–22

[fol. 115] 4. Requests or Prayers to the State Tax Commission, for its rulings of law 8–10
and rejection of said Prayers, except
Prayer No. 2, as modified, being Exhibit A to Appellant's Petition for Appeal 10
5. Federal License, (for copy see Record No. 38 pa. 443-467) 73
6. Order of State Tax Commission making its assessment final, as of January 1st, 1929, being Appellant's Exhibit B to its Petition for Appeal 10–11
7. Petition and Appeal of Appellant to the Circuit Court for Harford County, from said Commission's final Order of Assessment, and Order of Court thereon, and Exhibits A and B aforesaid 4–8
8. Motion to dismiss Appellant's appeal to the Circuit Court for Harford County 79–80
9. Petition and Opinion, January 6th, 1930, of Supreme Court of the United States in Farmers Loan and Trust Company vs. Minnesota, as Exhibit of Appellant to the Circuit Court for Harford County for a rehearing of said Appeal, because of the important Federal questions involved, of the power of the State of Maryland to tax the non-resident owner of stock of a Maryland corporation, and Order of Court thereon, granting rehearing 80–82
10. Final Order of the Circuit Court for Harford County, affirming assessment of the State Tax Commission 83
11. Bill of Exceptions of Appellant 83–84
12. Appeal and Affidavit to the Court of Appeals of Maryland, from said Order of the Circuit Court for Harford County, affirming the Order of the State Tax Commission 84
13. Opinion of the Court of Appeals of Maryland
14. Petition for appeal to the Supreme Court of the United States, and Order of Chief Judge of the Court of Appeals of Maryland, allowing said appeal .....
15. Assignment of Errors thereon .....

[fols. 116 & 117] 16. Copy of Appellant's bond and approval by said Chief Judge.....
17. Original Citation to Appellee and Return of Service.....
18. Præcipe and Notice to Appellee that Appellant will require the Clerk of the Court of Appeals to certify to the Clerk of the Supreme Court the entire printed record in said suit, and admission of service by attorneys for appellee.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

Service of the above points to be relied on and designation of parts to be printed, upon the Appellee admitted, this 20 day of August, 1930, and copy left with me.

Thos. H. Robinson, C. H. MacNabb, R. H. Archer, Attorneys for Appellee.

[fol. 118] [File endorsement omitted.]

[fol. 119] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED —Filed Aug. 29, 1930

The above Appellee hereby designates as necessary to be printed by the Clerk for the consideration of this case the following parts of the Record, in addition to those designated by the Appellant:

1. Insert: Pages 12-19, inclusive, of the Record.
2. " Pages 26, 27 and 28 of the Record, leaving out the part of the affidavit on page 28.
3. " The part of page 31 which includes Exhibit "B".
4. " Page 45, starting with the testimony of Jesse V. Sealy, down to and including the part of page 79 to the words on the middle of the page, "testimony closed."
5. The Appellee objects to inserting in this Record the Federal license granted the Susquehanna Power

Company, which is not a matter of record in this case, but under paragraph 5 of Appellant's designation of the parts of the Record to be printed it asks that the same be copied from the Record No. 38, because to print the same would be irregular and improper.

6. The Appellee objects to inserting in this Record the opinion of the Supreme Court of the United States in Farmers Loan & Trust Company vs. Minnesota, because to print the same would be irregular and improper.

Thos. H. Robinson, Charles H. MacNabb, Robert H. Archer, Attorneys for Appellee.

Service of the above notice and præcipe admitted this 28th day of August, 1930.

Wm. C. Mason, S. A. & F. R. Williams, Attorneys for Appellant.

[fol. 120] [File endorsement omitted.]

Endorsed on cover: File No. 35291 Maryland Court of Appeals. Term No. 369. The Susquehanna Power Company, Appellant, vs. State Tax Commission of Maryland. Filed August 21, 1930. File No. 35291.

FILE COPY

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SEP 6 1
CHARLES ELMORE

No. 369. OCTOBER TERM, 1930.

IN THE

Supreme Court of the United States

THE SUSQUEHANNA POWER COMPANY, Appellant,

v.

STATE TAX COMMISSION OF MARYLAND, Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930, GENERAL DOCKET NO. 39.

STATEMENT AS TO JURISDICTION ON APPEAL UNDER RULE 13 SECTION 1.

WM. CLARKE MASON,
2107 FIDELITY-PHILADELPHIA TRUST BUILDING, PHILADELPHIA, PA.
STEVENSON A. WILLIAMS,
FREDERICK R. WILLIAMS,
BEL AIR, MD.
Counsel for Appellant.

MORGAN, LEWIS & BOCKIUS,
Of Counsel.

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In the Supreme Court of the United States.

OCTOBER TERM, 1930. No. 369.

The Susquehanna Power Company, Appellant,

v.

State Tax Commission of Maryland, Appellee.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930, GENERAL DOCKET NO. 39.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

The Appellant hereby disclosing the basis on which it contends this Honorable Court has jurisdiction to review on appeal the judgment below, respectfully states:—

A.

This appeal is under Title 28 U. S. C. A. Section 344 (Jud. Code Section 237 amended).

Subsection (a)—"A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question

the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a Writ of Error." [Now an appeal under the Act of January 31, 1928, abolishing Writs of Error, as amended by the Act of April 26, 1928. (U. S. C. A. 1929 Cumulative, Title 28 Secs. 861a, 861b) 275 U. S. at 646, 647.]

B.

This appeal is from a final judgment of the Court of Appeals of the State of Maryland, the highest Court of the State, filed June 12, 1930 (Rec. 94), and the application for appeal to this Court was presented to the Chief Judge of the Court of Appeals of Maryland on the 10th day of July, 1930 (Rec. 87), and on the same day an Order thereon of the Chief Judge of said Court granted said appeal.

C.

THE NATURE OF THE CASE AND RULINGS BELOW.

1. *The nature of the case.*

This case raises questions concerning the legality of the assessment on the capital stock of a Maryland corporation by the State Tax Commission of Maryland, all of the shares of which are held by a non-resident of that State, *i. e.*, a corporation of the Commonwealth of Pennsylvania, with its place of business in Pennsylvania and doing all of its business in Pennsylvania.

The assessment of the tax is attacked as unlawful because of (1) the arbitrary valuation thereof fixed pursuant to a statute of the State of Maryland, and (2) the owner and holder of shares of stock, being a non-resident and

subject to taxation in the Commonwealth of Pennsylvania, is entitled to an exemption from taxation by the State of Maryland upon the same property, *i. e.*, the shares of stock in question, which, not being used in the business of the Pennsylvania company in the State of Maryland, have no situs in the latter state which subjects them to taxation therein.

(*a*) The appellant is a Corporation of Maryland and one of its charters is the Act of the General Assembly of Maryland of 1908, Chapter 268, which by Section 5 thereof provides that the appellant's powers are expressly granted in "aid of the Powers of Congress" (R. p. 5), and said Appellant is a licensee of the Federal Government under The Federal Water Power Act of Congress of June 10, 1920, Chapter 285 U. S. C. A. Title 16, Chapter 12 (for copy of Appellant's License see Record in case No. 368 at p. 433). All of the capital stock of the Appellant is owned by a non-resident of the State of Maryland, viz., Philadelphia Electric Power Company, a corporation of the Commonwealth of Pennsylvania and residing in the Commonwealth of Pennsylvania (R. p. 37).

(*b*) All of the Company's shares of capital stock have been assessed for taxation in Harford County, Maryland, (R. p. 19), where the principal office is located (R. p. 12).

(*c*) The final Order of the State Tax Commission (R. p. 25) assessed the shares of capital stock of the corporation for the year 1929 at $28,726,132. and credited thereon real estate $22,726,132. leaving the net aggregate assessment on each of its 245,500 shares at $24.43 (R. p. 20), making a total net aggregate assessment on all of said stock of $6,000,000.

The cost or book value of the total assets of appellant is $46,941,680. (R. p. 15); its indebtedness is $41,954,999., its net worth therefore, that is to say, the book value of its entire outstanding capital stock is $4,866,886. (R. p. 16),

so that the book value of each of the 245,500 shares outstanding (R. p. 10) is $19.82 per share (R. p. 13). It would follow from this that after the required deduction of the taxable value of the real estate and chattels were made the assessable values attributable to the capital stock tax would be wiped out.

By Public General Laws of Maryland (1924), Art 81, Section 163, it is provided that:—

> "in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several Counties and City of Baltimore, whether the shares of said stock are quoted on the market or not;"

By Pub. Gen. Laws of Maryland (1924), Art. 81, Section 166, it is provided that the State Tax Commission

> "Shall deduct the assessed value of such real property * * * belonging to the said * * * corporations * * * from the aggregate value of all shares of such * * * corporations * * * and divide the remainder by the number of shares of the capital stock * * * and the quotient shall be the taxable value of each of such respective shares for State purposes * * * and the said taxable value of such of said stock or shares as are held by non-residents of this State, shall for county and municipal purposes be valued to the owners thereof in the County or City in which said * * * corporation * * * is situated, but all County or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such * * * corporation * * * and when so paid shall or may be charged by such * * * corporation * * * to the account of such stockholders or shareholders respectively;"

The "minimum provision" in Section 163 above quoted compels the fixing of a value to the capital stock for taxation on a base, whichever may be higher, either that of the tangible property of the corporation or that of the stock. This provision requires the assessor to ignore the indebtedness of the corporation and as in the instant case results in an assessment against the stock greatly in excess of its proved value.

The "minimum provision" had never been passed upon by the Court of Appeals of Maryland, until its opinion in the instant case. It was not a point in the Corry case, 196 U. S. 466, in which the method of stock taxation was alleged to be invalid as a tax on the stockholders *without sufficient notice.*

The "minimum provision" of Section 163 above is a wholly arbitrary basis for the valuation and assessment of the shares of stock belonging to the stockholders.

Schlesinger *v.* Wisconsin, 270 U. S. 230.

The capital stock represents the net worth of the appellant, and its real value necessarily depends as much upon the appellant's debts as upon the amount of its property or assets. Section 163 simply provides that when, in the assessment of stock, it appears that direct taxation of the personalty would produce a greater tax, the stock shall be given an artificial and fiat value which bears no relation to the real value of the stock. Obviously Section 163 is not a valid exercise of taxing power, and imposes taxes arbitrarily and unreasonably by such a standard. It was decided by the Corry case, 196 U. S. at 472 that such taxes are levied *in personam* against the stockholders, on account of their ownership of the stock, so that while the instant tax is nominally levied upon the capital stock, and not directly upon the property of the corporation, yet the "minimum provision" makes the assessment in substance one laid on the tangible property of the appellant, and not on its stock. Apart from any question of double taxation the minimum clause as a basis for the assessment and tax

laid in the instant case is invalid as repugnant to the privilege and immunity, due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. It is repugnant to the equal protection clause that a non-resident stockholder of all the stock of the appellant should be taxed on an arbitrary assessment or any other basis by the State of Maryland, and at the same time be subject to an assessment and tax upon the same stock in the Commonwealth of Pennsylvania, and that the corporate stock of the appellant is so taxable to the owner thereof in Pennsylvania is settled by numerous decisions of this Court.

(*d*) The assessment complained of is based upon what is clearly an arbitrary valuation when comparison with book values is made, and as there is no market price for the stock, the only other basis for valuation is a going concern value, which is possible only by reason of the Federal franchise in the form of the License granted by the Federal Power Commission. If the latter basis is adopted the assessment on the capital stock is invalid because, of necessity, it must include a valuation for assessment of the Federal License, and this Court has refused to allow the states to tax property exempt from state taxation because of its Federal status by indirection for the same reasons that it has denied the right to tax directly. As, for instance, the income from patents under a State income tax law and taxes applicable to sales to Federal instrumentalities.

Long *v.* Rockwood, 277 U. S. 142;
Panhandle Oil Co. *v.* Mississippi, 277 U. S. 218;

And also an indirect method of taxing income from United States Bonds was held unconstitutional in that respect as indirectly in substance laying a tax on exempt securities.

Macallen Co. *v.* Massachusetts, 279 U. S. 620.

The federal franchise of the License to the appellant is exempt, and its inclusion in the mass of property covered

by general assessment has been held to make the entire assessment invalid.

California *v.* Pacific, 127 U. S. 1, 35, 40-45.

(*e*) Further under the recent decisions of this Court the State of Maryland cannot tax shares of stock in a Maryland corporation which are the property of a non-resident stockholder, by assessing the same to such non-resident at the domicil of the corporation as was done in the instant case. This point was raised by the protest filed with the State Tax Commission (R. p. 22), and at the appeal filed in the Circuit Court for Harford County (R. 80). And that protest ran to the assessability of the stock as a whole and not to any legal principles which applied to its valuation. It can no longer be doubted that intangible property has only one situs for taxation and that that situs is the State of the residence of the owner.

Safe Deposit *v.* Virginia, 280 U. S. 83-93-97;
Farmers Loan & Trust Co. *v.* Minnesota, 280 U. S. 204, 209-215;
N. J. Bell Tel. Co. *v.* State, 280 U. S. 338;
Baldwin *v.* Missouri, 281 U. S. 586;
Brinkerhoff Trust & Savings Co. *v.* Hill, 281 U. S. 673.

A question similar to the question raised on this appeal is now before this Court on Re-argument in Beidler *v.* South Carolina.

2. *The rulings below.*

The Court of Appeals of Maryland sustained the assessment of the tax upon the shares of stock of The Susquehanna Power Company, owned and held by Philadelphia Electric Power Company, a corporation of and resident in the Commonwealth of Pennsylvania, and held that there was no arbitrary valuation of the shares of stock, and that the valuation fixed did not necessarily include the value of the

franchise rights created under the license of the Federal Power Commission; and further held that there was no decision of the Supreme Court of the United States which deprived the State of Maryland of its right to tax the shares of stock owned by a non-resident because this right had been recognized in the case of Corry *v.* Baltimore City, 96 Maryland, 310, and had not been disturbed by any of the later decisions. These conclusions set forth in full in the opinion of the Court of Appeals (Record, p. 95) seem to have no sufficient support in the facts before that Court or in the decisions of this Court to sustain them.

> "Even though the constitutional protection invoked be denied on non-federal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded."
>
> Broad River *v.* South Carolina, 281 U. S. 540.

> "Neither ingenuity in calculation nor form of words in state enactments can deprive the owner of the tax exemption established for the benefit of the United States."
>
> Missouri *v.* Gehner, 281 U. S. 321.

D.

Citation of cases to sustain jurisdiction:—

Farmers Loan & Trust Co. *v.* Minnesota, 280 U. S. 204;
Safe Deposit & Trust Co. *v.* Virginia, 280 U. S. 83;
N. J. Bell Tel. Co. *v.* State, 280 U. S. 338;
Schlesinger *v.* Wisconsin, 270 U. S. 230;
Long *v.* Rockwood, 277 U. S. 142;
Panhandle Oil Co. *v.* Mississippi, 277 U. S. 218;
Macallen Co. *v.* Massachusetts, 279 U. S. 620;
California *v.* Pacific R. R., 127 U. S. 1;

Baldwin *v.* Missouri, 281 U. S. 586;
Brinkerhoff T. & S. Co. *v.* Hill, 281 U. S. 673;
Beidler *v.* South Carolina—U. S. Supreme Court pending;
Missouri *v.* Gehner, 281 U. S. 321;
Broad River *v.* South Carolina, 281 U. S. 540.

The jurisdiction of this Court would seem to be clear.

WM. CLARKE MASON,
STEVENSON A. WILLIAMS,
FREDERICK R. WILLIAMS,
Counsel for Appellant.

MORGAN, LEWIS & BOCKIUS,
Of Counsel.

FILE COPY

MAR 17

CHARLES ELMO

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 369.

THE SUSQUEHANNA POWER COMPANY, Appellant,

v.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

APPELLANT'S BRIEF.

STEVENSON A. WILLIAMS,
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FREDERICK R. WILLIAMS,
A. ALLEN WOODRUFF,
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Counsel for Appellant.

MORGAN, LEWIS & BOCKIUS,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1930. No. 369.

The Susquehanna Power Company, Appellant,

v.

State Tax Commission of Maryland.

APPELLANT'S BRIEF.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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OFFICIAL REPORT OF THE CASE IN THE COURT OF APPEALS OF MARYLAND.

The opinion below was delivered on June 12, 1930, and will be reported in 129 Md. . It is not yet available in the bound volume of Maryland Reports. It is, however, reported in 151 Atl. 32. It also appears in the transcript of record, pp. 64-73.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The Appellant has duly filed with this Honorable Court a "Statement As To Jurisdiction On Appeal" in compliance with Rule 12, Section 1 of the Revised Rules of this Court. Inasmuch as the validity of the Public General Laws of Maryland (1924), Article 81, Sections 154, 163, 166 and 166A, and the action of the State Tax Commission thereunder, were by the Appellant in this case called in issue as repugnant to various portions of the Federal Constitution, and inasmuch as the decision below was in favor of the validity of the State statute and the action of the State Tax Commission thereunder, it is submitted that, under the provisions of U. S. C. A., Title 28, §344, this Court will review the decision upon appeal in the nature of a writ of error, under the provisions of the Act of Congress of January 31, 1928, c. 14, as amended by the Act of Congress of April 26, 1928.

Questions Presented.

This case raises questions concerning the legality of the assessment on the capital stock of a Maryland corporation by the State Tax Commission of Maryland, all of the shares of which are held by a non-resident of that State, *i. e.*, a corporation of the Commonwealth of Pennsylvania, with its place of business in Pennsylvania and doing all of its business in Pennsylvania.

The assessment of the tax is attacked as unlawful because (1) the owner and holder of the shares of stock was a resident of the Commonwealth of Pennsylvania and subject to taxation in that State and is therefore entitled to an exemption from taxation by the State of Maryland upon such intangible property, the situs of which for taxation is in Pennsylvania; (2) the value fixed as the basis for assessment includes a value attributable to the Federal License granted The Susquehanna Power Company by the Federal Power Commission, which is not subject to taxation directly or indirectly by the State of Maryland; and (3) the assessment of the tax is based upon an arbitrary value required by the provisions of a statute of the State of Maryland, which provisions are invalid because repugnant to the Constitution of the United States.

STATUTES INVOLVED.

The Statutes involved are printed in the Appendix, *infra*, pages 35-46.

STATEMENT OF CASE.

This case is an appeal from a final judgment of the Court of Appeals of the State of Maryland which sustains an assessment of a tax by the State Tax Commission of Maryland purporting to be levied under the provisions of Article 81, Sections 154, 163, 166-166A, of the Maryland Code, against all of the shares of the stock of the Appellant which are owned and held by Philadelphia Electric Power Company, a corporation of the Commonwealth of Pennsylvania with its place of business in Pennsylvania, doing all of its business in Pennsylvania and having no office or business in the State of Maryland. In assessing the tax against the owners of the shares of stock of a Maryland corporation it is provided by Public General Laws of Maryland (1924), Article 81, Section 163, that:—

"in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several Counties and City of Baltimore, whether the shares of said stock are quoted on the market or not;"

By Pub. Gen. Laws of Maryland (1924), Art. 81, Section 166, it is provided that:—

"The respective taxable value of the shares of stock in such * * * corporation * * * shall be ascertained by the State Tax Commission in the manner following: *he* shall deduct the assessed value of such real property * * * belonging to the said * * * corporations * * * from the aggregate value of all shares of such * * * corporations * * * and divide the remainder by the number of shares of the capital stock * * * and the quotient shall be the taxable value of each of such respective shares for State purposes * * * and the said taxable value of such of said stock or shares as are held by *non-residents** of this State, shall for county and municipal purposes be valued to the owners thereof in the County or City in which said * * * corporation * * * is situated; but all County or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such * * * * corporation * * * and when so paid shall or may be charged by such * * * corporation * * * to the account of such stockholders or shareholders respectively;"

The Appellant is a corporation of the State of Maryland and by Section 5 of its "1908 Charter," (Laws of Maryland 1908, Chap. 268, see Appendix), it is provided that the Appellant's powers are expressly granted in "aid of the powers of congress," and said Appellant is a Licensee (Record in Case No. 368, pp. 288-311) of the Federal

*Italics in quotations throughout this Brief are ours, unless otherwise noted.

Government under The Federal Water Power Act of Congress of June 10, 1920 (41 Stat. L. p. 1063). All of the 245,500 shares of the capital stock of the Appellant are owned by a non-resident of the State of Maryland (Rec. p. 65), viz., Philadelphia Electric Power Company, a corporation of the Commonwealth of Pennsylvania with its only place of business in the Commonwealth of Pennsylvania (R. p. 71)

All of the shares of capital stock of the Appellant, owned by its non-resident stockholder, have been assessed for taxation in Harford County, Maryland (R. p. 13), where the principal office of Appellant is located (R. p. 7).

The final Order of the State Tax Commission (R. p. 13, 18-19) fixed the aggregate value of all the shares of capital stock of the corporation for the year 1929 at $28,726,132. and deducted therefrom, as assessed value of real estate, $22,726,132., leaving the net aggregate assessment of $6,000,000. on all of said 245,500 shares of stock, or a net assessment of $24.43 per share (Rec. p. 13).

The indebtedness of Appellant is $41,954,999 (R. p. 15). It would follow that, after the required deduction of the assessed value of the real estate is made, the value attributable to the capital stock in this case, otherwise assessable, is wiped out by the indebtedness.

The "minimum provision" in Section 163 above quoted compels the fixing of a value to the capital stock for taxation on a base, whichever may be higher, either that of the tangible property of the corporation or that of the shares of stock. This provision requires the State Tax Commission to ignore the indebtedness of the corporation in many cases and as in the instant case results in an assessment against the stock greatly in excess of its proved value.

The description of the property owned and the use to which the property is put, in the State of Maryland, pursuant to the License granted this Appellant by the Federal Power Commission, is set forth in detail in the Record and Briefs in the companion appeal in this Court of The Susquehanna Power Company *v.* State Tax Commission of Maryland, No. 368, October Term, 1930.

RULINGS BELOW.

The Court of Appeals of Maryland sustained the assessment of the tax upon the shares of stock of The Susquehanna Power Company, owned and held by Philadelphia Electric Power Company, a corporation of and resident in the Commonwealth of Pennsylvania, and held that there was no arbitrary valuation of the shares of stock, and that the valuation fixed did not include the value of the franchise rights created under the License of the Federal Power Commission; and further held that there was no decision of the Supreme Court of the United States which denies the State of Maryland the right to tax the shares of stock owned by a non-resident because this right had been recognized in the case of Corry *v.* Baltimore City, 196 U. S. 466, and had not been disturbed by any of the later decisions.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

I.

That said Court of Appeals of Maryland erred in not reversing the judgment of the Circuit Court for Harford County, dated the 20th day of January, 1930, which affirmed the Order of the State Tax Commission of Maryland, dated the 18th day of December, 1929, assessing the capital stock of said Appellant for taxation, because the owner of said capital stock is a resident of the State of Pennsylvania, where the said stock is taxable, and the assessment thereof in the State of Maryland is double taxation, depriving Appellant and the owner of said stock of their property without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

II.

That said Court of Appeals of Maryland erred in not holding void the provision of Section 163 of Article 81 of the Public General Laws of Maryland (1924) requiring that in no case shall the capital stock of any corporation (such as the Appellant) in the aggregate, be valued for tax purposes at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation, and in approving the arbitrary assessment of said capital stock made pursuant to said Statute, at more than the fair value thereof, and thereby depriving said owner and said Appellant of their and its property, without due process of law, in contravention of the Constitution of the United States and of the Fourteenth Amendment thereof.

III.

That said Court of Appeals of Maryland erred in not holding that no value can be given to the capital stock of said Appellant in excess of the value of the real estate and chattels, real or personal, for assessment, because such excess would include in such assessment the value of the franchise rights of the corporation, granted to it under the license of the Federal Power Commission, and such value is not subject to assessment for taxation by the State of Maryland, or any political subdivision thereof, because said Appellant under said license is a Federal Agent and instrumentality to improve the navigation upon a navigable river, which is a highway of interstate commerce.

ARGUMENT.

Summary.

This appeal raises three questions under the Constitution of the United States:—

One is whether the State of Maryland may tax a non-resident because of the ownership of *intangible* property

consisting of stock of a Maryland corporation, although such non-resident is not engaged in business in the State of Maryland and has no office and does no business outside of the Commonwealth of Pennsylvania.

A second question is whether, under a State law providing for an assessment for taxation of the stock of a corporation, which requires the State Tax Commission to find the aggregate value of all shares and then deduct therefrom the assessed value of all real property owned by the corporation and taxed separately, if the facts before the State Tax Commission show that the net value of all physical property is insufficient to leave a value applicable to the capital stock after making the required deductions, an assessment is made lawfully which includes a valuation given to the privilege or franchise acquired by the corporation under a Federal License from the Federal Power Commission to operate its physical property located on the Susquehanna River, a navigable river in the State of Maryland.

It is also asserted by the Appellant that the provisions of the State law which demand that a minimum arbitrary valuation be fixed by the State Tax Commission at no less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the State of Maryland, thereby requiring that no consideration be given to or deduction made of the indebtedness of the corporation, is a provision repugnant to the provisions of the Federal Constitution.

(1) The owner and holder of the shares of stock was a resident of the Commonwealth of Pennsylvania and subject to taxation in that State and is therefore entitled to an exemption from taxation by the State of Maryland upon such intangible property the situs of which for taxation is in Pennsylvania.

The taxing authorities of the State of Maryland levied a tax upon the capital stock of the Appellant. The tax in question was assessed against all of the stock of the Ap-

pellant and the tax judgment is against the Appellant, because all of its stock is owned and held by a non-resident, to wit, by Philadelphia Electric Power Company, a corporation of the State of Pennsylvania which has no office and does no business in the State of Maryland. The State law requires the corporation to be answerable for the payment of such taxes to the extent that the stock which is the subject matter of the tax is owned by non-residents, although where the ownership is by residents of the State the payment is collected from such residents individually.

The tax in this case is in reality a tax against the non-resident shareholder and while it is imposed on this Appellant in the first instance for the purpose of collection, this Appellant is entitled to reimbursement from the non-resident stockholders and the amount paid constitutes a lien upon such shareholder's stock and the corporation may proceed by personal action against the non-resident shareholder to recover the amount paid. It is not a tax on the stock *in rem* or on the corporation. It is not a tax against the tangible property of the corporation nor a tax levied against the corporation as a corporate entity.

Even though the conclusions reached in *Corry* v. *Baltimore*, 196 U. S. 466 (1904), appear to have been overruled in principle by the recent decisions of this Court the nature of the tax under consideration in the present case is so clearly set forth in the opinion of Mr. Justice White in that case that the following quotation leaves no doubt concerning the character and effect of this Maryland tax (p. 472):—

> "In case of stock in Maryland corporations owned by non-residents the statutes declare that the situs of such stock, for the purpose of taxation, shall be at the principal office of the corporation in Maryland, and such shares are there assessed at their value to the owners. The statutes undoubtedly impose upon a Maryland corporation the duty of paying for and on account of the owners the taxes assessed in respect of the shares, and compel such payment without reference to the dividends, giving to the corporation a lien upon the shares of stock,

and entitling the corporation, when it pays the taxes, to proceed by a personal action to recover the amount paid. *Dugan* v. *Mayor of Baltimore*, 1 G. & J. 499, 502; *Mayor &c.* v. *Howard*, 6 H. & J. 383, 394; *American Coal Co.* v. *Allegheny Co. Comrs.*, 59 Maryland 185; *Hull* v. *Southern Development Co.*, 89 Maryland 8, 11.

"The Maryland decisions have also settled that the tax is on the stockholder personally because of his ownership of the stock, and is not on the stock *in rem* or on the corporation. The Maryland doctrine on the subject is shown by the opinion of the Court of Appeals of Maryland in *United States Electric Power & Light Company* v. *State*, 79 Maryland 63, where the court said (p. 70):—

" 'But the tax is not a tax upon the stock or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the State for the collection of the state tax. It is not material what assets or other property make up the value of the shares. Those shares are property, and under existing laws are taxable property. They belong to the stockholders respectively and individually, and when for the sake of convenience in collecting the tax thereon, the corporation pays the state tax upon these shares into the state treasury, it pays the tax not upon the company's own property, nor for the company, but upon the property of each stockholder and for each stockholder respectively, by whom the company is entitled to be reimbursed. Hence when the owner of the shares is taxed on account of his ownership and the tax is paid for him by the company, the tax is not levied upon or collected from the corporation at all.' "

The question, therefore, is whether the State of the domicile of the corporation has the power to tax a non-resident stockholder based upon an assessment of the value of the

intangible property owned by such non-resident. This question was disposed of by the learned Court below as follows (Record, pp. 71, 72) :—

> "The remaining contention is that as all of appellant's stock is held by the Philadelphia Electric (Power) Company, a non resident corporation it cannot be taxed at all in this state. The stock was assessed to the non resident at appellant's principal office in Bel Air, Harford County, Maryland, under the authority of Code Art. 81 sec. 154 and the appellant is required to pay all taxes levied thereon. *Ibid* secs. 163, 166, 166A. The objection therefore goes beyond the immediate assessment and reaches the statutes under the authority of which it was made. The effect of those statutes was to fix the situs of stock in a Maryland corporation held by a non resident, in the county or city where such corporation was situated, to impose upon the corporation an obligation to pay any valid tax levied thereon, and to authorize it to charge such payment to the account of the stockholder, and such was the law not only at the time the Company was incorporated, but at the time Corry *v.* Baltimore City *infra* was decided, Acts 1896 Ch. 120 sec. 141. The question therefore falls precisely within the decision of this court in Corry *v.* Baltimore City, 96 Md. 310 in 1903, and of the Supreme Court in Corry *v.* Baltimore, 196 U. S. 465 decided in 1905, and Hannis Dist. Co. *v.* Baltimore, 216 U. S. 285 decided in 1910, in which the validity of those statutes was established. But it is asserted that the Supreme Court in two recent cases, Safe Deposit Co. *v.* Virginia, 280 U. S. 83, and Farmer's Loan and Trust Co. *v.* Minnesota, 280 U. S. 204, has rendered the authority of the Corry case doubtful. But after a careful examination of those cases we are unable to agree with that conclusion."

* * * * * * * *

> "Neither of those decisions involved the questions presented here and decided in Corry *v.* Baltimore

supra, which are (1) that a state may determine the situs of stock issued by a corporation chartered by it and owned by non residents, where the legislation effecting that result was in existence at the time the charter was granted, and (2) that as an incident of that power it may require the corporation to pay the tax, and (3) may authorize it to charge such payment to the account of the stockholder.

"Nor are the reasons which led the court in the Minnesota case to overrule Blackstone *v.* Miller 188 U. S. 189 present in this case, but on the contrary if judicial decisions are to be controlled by the changing demands of trade and commerce and considerations of public policy, such considerations inevitably demonstrate the wisdom of the conclusion reached in Corry *v.* Baltimore *supra.* There is no question of double taxation presented here, but the essential question is whether the stock is to escape taxation altogether in the state where the tangible property which it represents is situated."

The best answer to the reasoning of the learned Court below and the conclusions based thereon is found in the language of the majority of this Court in the following decisions:—

Baldwin v. *Missouri,* 281 U. S. 586, at page 591:—

Mr. Justice McReynolds;

"The challenged judgment rests upon the broad theory that a state may lay succession or inheritance taxes measured by the value of any deposits in local banks passing from a non-resident decedent; also upon the value of bonds issued by the United States and promissory notes executed by individual citizens of the state when devised by such non-resident if these bonds or notes happen to be found within the confines of the state when death occurs. The cause was decided below

prior to our determination of Farmers Loan & T. Co. *v.* Minnesota, 280 U. S. 204, *ante*, 371, 50 Sup. Ct. Rep. 98. Blackstone *v.* Miller, 188 U. S. 189, 47 L. ed. 439, 23 Sup. Ct. Rep. 277, was cited in support of the conclusion reached. Considering Farmers Loan & T. Co. *v.* Minnesota and previous opinions there referred to, the theory upon which the court below proceeded is untenable and its judgment must be reversed."

Farmers Loan & Trust Company v. *State of Minnesota*, 280 U. S. 204, at page 209:—

Mr. Justice McReynolds;

"Blackstone *v.* Miller, *supra*, and certain approving opinions, lend support to the doctrine that ordinarily choses in action are subject to taxation both at the debtor's domicile and at the domicile of the creditor; that two states may tax on different and more or less inconsistent principles the same testamentary transfer of such property without conflict with the 14th Amendment. The inevitable tendency of that view is to disturb good relations among the states and produce the kind of discontent expected to subside after establishment of the Union. The Federalist, No. VII. The practical effect of it has been bad; perhaps two thirds of the states have endeavored to avoid the evil by resort to reciprocal exemption laws. It has been stoutly assailed on principle. Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable. Blackstone *v.* Miller no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding it is definitely overruled."

Further on page 211:—

"Tangibles with permanent situs therein, and their testamentary transfer, may be taxed only by the state

where they are found. And, we think, the general reasons declared sufficient to inhibit taxation of them by two states apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction. Primitive conditions have passed; business is now transacted on a national scale. A very large part of the country's wealth is invested in negotiable securities whose protection against discrimination, unjust and oppressive taxation, is matter of the greatest moment. Twenty-four years ago Union Refrigerator Transit Co. *v.* Kentucky, *supra*, declared: 'In view of the enormous increase of such property (tangible personalty) since the introduction of railways and the growth of manufactures, the tendency has been in recent years to treat it as having a situs of its own for the purpose of taxation and correlatively to exempt it at the domicile of the owner. And, certainly, existing conditions no less imperatively demand protection of choses in action against multiplied taxation whether following misapplication of some legal fiction or conflicting theories concerning the sovereign's right to exact contributions. For many years the trend of decisions here has been in that direction.

"Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general, intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles.' The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota."

Safe Deposit & Trust Company v. *Commonwealth of Virginia*, 280 U. S. 83, at page 93:—

Mr. Justice McReynolds;

"Here we must decide whether intangibles—stocks, bonds—in the hands of the holder of the legal title with definite taxable situs at its residence, not subject to change by the equitable owner, may be taxed at the latter's domicile in another state. We think not. The reasons which led this court in Union Refrigerator Transit Co. *v.* Kentucky, 199 U. S. 194, 50 L. ed. 150, 26 Sup. Ct. Rep. 36, 4 Ann. Cas. 493, and Frick *v.* Pennsylvania, *supra*, to deny application of the maxim *mobilia sequuntur personam* to tangibles apply to the intangibles in appellant's possession. They have acquired a situs separate from that of the beneficial owners. The adoption of a contrary rule would 'involve possibilities of an extremely serious character' by permitting double taxation, both unjust and oppressive. And the fiction of *mobilia sequuntur personam* 'was intended for convenience, and not to be controlling where justice does not demand it.'

"No opinion of this court seems definitely to rule the exact point now presented."

And further on page 94:—

"Any general statement in the above opinions which may seem to interfere with the conclusion here announced must be limited and confined to the precise situation then under consideration.

"It would be unfortunate, perhaps amazing, if a legal fiction originally invented to prevent personalty from escaping just taxation, should compel us to accept the irrational view that the same securities were within two states at the same instant and because of this to uphold a double and oppressive assessment.

"The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion."

Beidler v. *South Carolina*, U. S. , 72 L. ed. 69 (1930), at page 70:—

Mr. Chief Justice Hughes;

"In reaching its conclusion as to the validity of the tax, the state court relied chiefly upon the decision of this Court in Blackstone *v.* Miller, 188 U. S. 189. That decision has been overruled, and it is now established that the mere fact that the debtor is domiciled within the State does not give it jurisdiction to impose an inheritance or succession tax upon the transfer of the debt by a decedent who is domiciled in another State. Farmers Loan & Trust Company *v.* Minnesota, 280 U. S. 204; Baldwin *v.* Missouri, 281 U. S. 586. The transfer is taxable by the State of the domicile of the deceased owner. Blodgett *v.* Silberman, 277 U. S. 1. Open accounts, including credits for cash deposited in bank, fall within this principle, and its application is not defeated by the mere presence of bonds or notes, or other evidences of debt, within a State other than that of the domicile of the owner. Baldwin *v.* Missouri, *supra*.

"It is sought to sustain the tax by South Carolina upon the ground that the indebtedness had what is called a 'business situs' in that State, and the state court adverted to this basis for the tax. In Farmers Loan & Trust Company *v.* Minnesota, *supra*, this Court reserved the question of business situs, saying: 'New Orleans *v.* Stempel, 175 U. S. 309, Bristol *v.* Washington County, 177 U. S. 133, Liverpool & L. & G. Ins. Co. *v.* Orleans Assessors, 221 U. S. 346, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business. The present record gives no occasion for us to inquire whether such securities can be taxed a second time at the owner's domicile.' But a conclusion that debts have thus acquired a business

situs must have evidence to support it, and it is our province to inquire whether there is such evidence when the inquiry is essential to the enforcement of a right suitably asserted under the Federal Constitution.

"In the present case, beyond the mere fact of stock ownership and the existence of the indebtedness, there is no evidence whatever, having any bearing upon the question, save a copy of the decedent's account with the corporation, taken from his books which were kept by him in his office at Chicago. The various items of debit and credit in this account, in the absence of any further evidence, add nothing of substance to the fact of the indebtedness as set forth in the agreed statement and afford no adequate basis for a finding that the indebtedness had a business situs in South Carolina."

The question which is before this Court on this appeal was not disposed of in the Beidler case, *supra*, for the reason that the executors of the non-resident testator failed to contest the assessment of the tax upon certain shares of stock of the South Carolina corporation owned by the testator, but had they so contested for the same reasons that they contested the levy upon the other intangibles, a similar conclusion apparently would have been reached upon the question so raised.

(2) The value fixed as the basis for assessment includes a value attributable to the Federal License granted The Susquehanna Power Company by the Federal Power Commission, which is not subject to taxation directly or indirectly by the State of Maryland.

The Appellant contended that in spite of the assertion by the State Tax Commission that the valuation fixed for the stock of this corporation as a basis for the tax levied against the non-resident stockholder was arrived at "according to law," the evidence before the Commission was such

that no real value could be found for the stock unless a value were given to the rights acquired in the nature of franchises under the Federal License granted by the Federal Power Commission.

The evidence shows that the cost or book value of the total assets of the Appellant, including tangibles and intangibles, was $46,821,885.28, and that its indebtedness was $41,954,998.92. Its net worth on the undisputed evidence was $4,866,886.36 (R. 10). The applicable state law provides for a deduction of the assessed value of the real property which, for the year in question, is shown by the record to be $22,726,132. This valuation deducted from the net worth leaves no basis for an assessment of the capital stock insofar as tangible assets are concerned.

The evidence also shows that there was no market value for these shares, all of which were owned by the non-resident stockholder (R. 8). It follows, therefore, indisputably, that any value to be given to these shares must be that which is reflected by the right to operate the Conowingo Project in the bed of the Susquehanna River and this right is derived solely from the Federal License, without which no grant from the State of Maryland could be exercised.

The learned Court below disposed of this contention of Appellant in the following language (R. 70):—

> "And while it may be assumed that the appellant could not operate its project without the license, nevertheless it may be valued and assessed without including the actual value of the license, just as the property of a manufacturing or mercantile establishment may be taxed and assessed without including in the valuation the value of the license which enables it to operate. For the property of the corporation is separate and distinct from its right to operate or to use its property in a specific way."

This conclusion overlooks the fact that the tax under consideration was not a tax against the property of the

Corporation, but a tax against the non-resident stockholder based upon the value given to intangible property owned by it consisting of the shares of stock of the Appellant. If the valuation had reflected the value only of the property separate and apart from the right to operate under the Federal License the indebtedness would have absorbed such value, and left nothing for taxation. The only basis by which any value for the stock can be shown above the indebtedness and the deductible valuation given to real estate is that attributable to the Federal franchise. The decision of the learned Court of Appeals in this particular seems to be in conflict with the following decisions of this Court:

In *California* v. *Pacific Railroad Co.*, 127 U. S. 1, Mr. Justice Bradley of this Court said (p. 41):—

> "In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed, or render it valueless. As Chief Justice Marshall said in McCulloch *v.* Maryland, 'the power to tax involves the power to destroy.' Recollecting the fundamental principle that the Constitution, laws and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the government that confers it. To tax it, is not only derogatory to the dignity, but subversive of the powers of the government, and repugnant to its paramount sovereignty. It is unnecessary to cite cases on this subject. The principles laid down by this court in McCulloch *v.* Maryland, 4 Wheat. 316; Osborn *v.* The Bank of the United States, 9 Wheat. 738; and Brown *v.* Maryland, 12 Wheat. 419; and in numerous cases since which have followed in

their lead, abundantly sustain the views we have expressed. It may be added that these views are not in conflict with the decisions of this court in Thomson *v.* Pacific Railroad, 9 Wall. 579, and Railroad Co. *v.* Peniston, 18 Wall. 5. As explained in the opinion of the court in the latter case, the tax there was upon the property of the company and not upon its franchises or operations. 18 Wall. 35, 37.

"The taxation of a corporate franchise merely as such, unless pursuant to a stipulation in the original charter of the company, is the exercise of an authority somewhat arbitrary in its character. It has no limitation but the discretion of the taxing power. The value of the franchise is not measured like that of property, but may be ten thousand or ten hundred thousand dollars, as the legislature may choose. Or, without any valuation of the franchise at all, the tax may be arbitrarily laid. It is not an idle objection, therefore, made by the company against the tax imposed in the present cases."

And concludes (on p. 45):—

"It follows that in each one of the cases now before us, the assessment made by the State Board of Equalization comprised the value of franchises or property which the board was prohibited by the constitution of the State or of the United States from including therein; and that these values are so blended with the other items of which the assessment is composed that they cannot be separated therefrom. The assessments are, therefore, void."

The method of valuation adopted by the taxing authorities of Maryland, excused by the Court of Appeals of Maryland but condemned by the decisions of this Court because inclusive of a non-taxable license or franchise, is almost identical with the method adopted by the State of Kentucky and condemned by this Court in *Louisville Ferry*

Company v. *Kentucky*, 188 U. S. 385, in which Mr. Justice Harlan said (pp. 393, 395, 398):—

"It thus appears from the admitted facts and from the opinion of the court below that the State Board, in its valuation and assessment of the franchise derived by that company from Kentucky, included the value of the franchise obtained from Indiana for a ferry from its shore to the Kentucky shore. In short, as stated by the Court of Appeals, the value of the franchise of the ferry company was fixed 'as if it conducted all of its business in the territorial limits of the State of Kentucky,' making no deduction for the value of the franchise obtained from Indiana. * * *

"As, then, the privilege of maintaining the ferry in question from the Indiana shore to the Kentucky shore is a franchise derived from Indiana, and as that franchise is a valuable right of property, is it within the power of Kentucky to tax it directly or indirectly? It is said that the Indiana franchise has not been taxed, but only the franchise derived from Kentucky; that the tax is none the less a tax on the Kentucky franchise, because of the value of that franchise being increased by the acquisition by the Kentucky corporation of the franchise granted by Indiana. This view sacrifices substance to form. If the Board of Valuation and Assessment, for purposes of taxation, had separately valued and assessed at a given sum the franchise derived by the ferry company from Kentucky, and had separately valued and assessed at another given sum the franchise obtained from Indiana, the result would have been the same as if it had assessed, as it did assess, the Kentucky franchise as an unit upon the basis of its value as enlarged or increased by the acquisition of the Indiana franchise. * * *

"The taxation of that franchise or incorporeal hereditament by Kentucky is, in our opinion, a deprivation by that State of the property of the ferry company without due process of law in violation of

the Fourteenth Amendment of the Constitution of the United States; as much so as if the State taxed the real estate owned by that company in Indiana."

In *Panhandle Oil Company v. Knox*, 277 U. S. 218, Mr. Justice Butler said (p. 221):—

"The States may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of federal functions."

This Court in *Long* v. *Rockwood*, 277 U. S. 142, denied to the State of Massachusetts the power to tax royalties derived from a patent, in this language (p. 147):—

Mr. Justice McReynolds;

"The power to exclude others granted by the United States to the patentee subserves a definite public purpose—to promote the progress of science and useful arts. The patent is the instrument by which that end is to be accomplished. It affords protection during the specified period in consideration of benefits conferred by the inventor. And the settled doctrine is that such instrumentalities may not be taxed by the States."

It is suggested that if the words "Licensee" and "Federal License" are substituted for "patentee" and "patent," this conclusion applies exactly to the case at bar.

The Macallen Company v. *Massachusetts*, 279 U. S. 620, affirms California *v.* Pacific Railroad Co. (*supra*), and denies to a State the power to tax indirectly a non-taxable subject. On page 628 of the Macallen case this Court said:

"Not only may the power to tax be exercised oppressively, but for one government—state or national—to lay a tax upon the instrumentalities or securities of

the other is derogatory to the latter's dignity, subversive of its powers, and repugnant to its paramount authority. See California *v.* Pacific Railroad Co., 127 U. S. 1, 41. These constitute special and compelling reasons why courts, in scrutinizing taxing acts like that here involved, should be acute to distinguish between an exaction which in substance and reality is what it pretends to be, and a scheme to lay a tax upon a non-taxable subject by a deceptive use of words. The fact that a tax ostensibly laid upon a taxable subject is to be measured by the value of a non-taxable subject at once suggests the probability that it was the latter rather than the former that the law-maker sought to reach. If inquiry discloses persuasive grounds for the conclusion that such is the real purpose and effect of the legislation, the tax cannot be upheld without subverting the well-established rule that '* * * what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result * * * constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation.' Fairbank *v.* United States, 181 U. S. 283, 294, 300."

In the opinion of the Court of Appeals of Maryland in the record in this Court on appeal in The Susquehanna Power Co. *v.* State Tax Commission, No. 368, October Term, 1930, there is further support for the contention that the learned Court below sustained the action of the State Tax Commission which included the value of the Federal License in the taxable value given to the Appellant's property. The reasoning therein set forth shows the method by which this indirect tax is arrived at (p. 344, Record in No. 368):—

"Assuming that neither the license nor the franchises may be taxed, the value they gave to appellant's project

by permitting it to operate is taxable. Manifestly if the appellant were not permitted to operate its project, much of its property devoted to its purposes, would have a mere junk value, and the fact that it can operate is what gives its property its greatest earning power and utility. And as its value largely depends upon those elements, the effect of the license and franchises can not be ignored, Consol. Gas etc. Co. *vs.* Baltimore, 101 Md. 541, in valuing its property."

Missouri v. Gehner, 281 U. S. 313, seems to hold that the Federal License granted for a purpose to benefit the United States is free from the burdens attempted to be imposed upon it by the State of Maryland (p. 321):—

"Neither ingenuity in calculation nor form of words in state enactments can deprive the owner of the tax exemption established for the benefit of the United States. Nat'l. Life Ins. Co. *v.* United States, 277 U. S. 508, 519, and cases cited. M'Culloch *v.* Maryland, 4 Wheat. 316, 431, 432, 436."

In *Klein* v. *Board of Tax Supervisors,* U. S. ; 75 L. ed. 65, Mr. Justice Holmes said (p. 66):—

"There is no doubt that a State may tax a corporation and also tax the holders of its stock. *Tennessee* vs. *Whitworth,* 117 U. S. 129, 136. The owners are different and, although the Appellant calls it a mischievous fiction, the property is different. While no doubt the property and expectations of the corporation are the backbone of the value of the shares, yet the latter may get additional value from another source."

The "additional value" which the State of Maryland has found and is attempting to tax in the instant case is Appellant's right to operate under the Fifty-Year Federal License.

(3) The assessment of the tax is based upon an arbitrary value required by the provisions of a statute of the State of Maryland, which provisions are invalid because repugnant to the Constitution of the United States.

By Public General Laws of Maryland (1924), Art. 81, Section 163, it is provided that:—

> "in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several Counties and City of Baltimore, whether the shares of said stock are quoted on the market or not;"

The "minimum provision" had never been passed upon by the Court of Appeals of Maryland, until its opinion in the instant case. It was not a point decided in the Corry case, 196 U. S. 466, in which the method of stock taxation was attacked as invalid because a tax on the stockholders without sufficient notice.

The "minimum provision" of Section 163 above is a wholly arbitrary basis for the valuation and assessment of the shares of stock belonging to the stockholders.

The capital stock represents the net worth of the Appellant, and its real value necessarily depends as much upon the Appellant's indebtedness as upon the amount of its property or assets. Section 163 provides that when, in the assessment of stock, it appears that direct taxation of the personalty would produce a greater tax, the stock shall be given an artificial and flat value which bears no relation to the real value of the stock. Obviously Section 163 is not a valid exercise of taxing power, and imposes taxes arbitrarily and unreasonably by such a standard.

The learned Court below defends the assessment by the State Tax Commission, holding that the State would have the right to tax the personal property of a corporation by

direct assessment and disregard any indebtedness against it in fixing the taxable value, and because of that power the Court says (R. 69):—

> "Since it could have taxed such property directly without reference to such liens there is no valid reason why it may not be taxed indirectly through appellant's capital stock, on an assessment made without reference to liens or debts, for in neither case would the corporation be called upon to pay taxes upon more than the assessable value of its property. And there is no possible basis for the contention that the method adopted subjects any of the corporate property to double taxation. For under it the realty is subjected only to direct taxation, and the personal property only to indirect taxation, based in both instances on the fair value of the property taxed."

The Court also concluded that the express declaration of the Chairman of the Commission that it had considered the "net" assets of the corporation in fixing the value of the stock, justifies the conclusion that it cannot be assumed that its action was affected by the arbitrary mandate of the Statute (R. 68, 69). The justification for this assumption cannot be found in the record evidence for the reason that the undisputed testimony (R. 10) shows that the net worth was $4,866,886.36. This net worth, however, under the Maryland Statute could not sustain a taxable valuation of the capital stock of $6,000,000. given to it by the Commission, because in arriving at such taxable value the mandate of the Maryland Code requires a deduction of the assessed value of the real estate of the corporation, and this, as shown by the Record (p. 13) is the sum of $22,726,132. The reason urged by the learned Court below against a charge that the method of assessment required by the statute produced double taxation, by the showing that personal property of the corporation is not taxed under State law and the tax against capital stock is merely an indirect method of levying such a personal property tax, is interesting but

hardly conclusive in this case. The tax under consideration is not a tax against the corporation. There is no prohibition against legislation by the State of Maryland that would provide a direct tax against the personal property of this Appellant. On behalf of its non-resident stockholder, however, this Appellant asserts, with confidence, that the reasoning of the Court below cannot justify the tax which has been assessed against the stock holdings of the non-residents. The evidence as to double taxation resulting from the arbitrary assessment required by the Maryland Code is to be found by contrasting the tax liability of two classes of stockholders in a Maryland corporation. The resident owner of such intangible property as these shares of stock would pay a tax only to the State of Maryland (the domicile of the owner and situs of the intangible), but the non-resident stockholder pays twice, once to Maryland where the corporation is domiciled, and a second time to the State of his own domicile (where the situs of the intangible property justifies the levying of such tax). What has just been said is in answer to the suggestion of the learned Court below that the arbitrary assessment does not produce double taxation in any case. Regardless of the question of double taxation, it is the fact that the valuation is *arbitrary* which justifies the complaint that the State of Maryland by such a statute has violated the provisions of the Federal Constitution intended to afford protection to the taxpayer.

The learned Court below seems to excuse the failure of the State Tax Commission to deduct the indebtedness of the Appellant in arriving at the "aggregate value" of the capital stock by comparing the subject matter of assessment, which is the shares of stock of the corporation, with real estate as the subject matter for taxation. The learned Court correctly states the duty of the taxing authorities to arrive at the value of real estate for assessment without regard to the indebtedness existing against it, but the learned Court incorrectly assumes that in arriving at the aggregate value of the shares of stock of a corporation, the indebtedness of the corporation is not an element for consideration. No

actual value can be given to such shares of stock which is based solely upon a valuation of assets without deducting the liabilities that may be against them. The net worth of the corporation constitutes the aggregate value of its shares. When such aggregate value of the shares of the corporation is arrived at, the assessment against the stockholder is properly made without deducting from the value of his shares such indebtedness as *he* may have against them. This presents the analogy to the case assumed by the Court when determining the taxable value of real estate. In the latter, the outstanding indebtedness of the taxpayer against such real estate is properly ignored. In the case of shares of stock, the outstanding indebtedness of the owner of such shares against the stock may be properly ignored. In ascertaining the value of such shares, however, the indebtedness of the corporation in relation to its assets, if ignored, produces an arbitrary and unreal valuation of such shares and not the true and actual valuation thereof to which the shareholder is entitled.

In *Schlesinger v. Wisconsin*, 270 U. S. 230, this Court clearly stated that the basis for the assessment of the tax there under consideration was "wholly arbitrary" and that such a classification would be in plain conflict with the Fourteenth Amendment. In this case, as in that, the statute demands a finding of fact without regard to actualities. The State Tax Commission of Maryland was directed to value the shares of stock of this Appellant in the aggregate in a sum not less than the value for taxation placed upon the real estate of the corporation. If, as the Court below suggests, the Commission failed to follow the statutory mandate, there was no authority under the State law for the assessment which was made. If on the other hand the State Tax Commission followed the mandate, then, although authorized by the Statute so to do, the foundation of authority was invalid because it violated the Federal Constitution. The record facts seem to show conclusively that in either event the final taxable value found, completely ignored the indebtedness of the Appellant, which

was in excess of $41,000,000., and therefore, whatever method the State Tax Commission adopted, it reached a conclusion that cannot be sustained.

In the case of *Ohio Oil Company v. Conway*, 281 U. S. 146, this Court affirmed with approval its earlier decisions condemning the effort of a State to collect a tax on the basis of a valuation wholly arbitrary, and in that case Mr. Chief Justice Hughes says (p. 160):—

> "* * * there is a point beyond which the state can not go without violating the equal protection clause. The state may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The state is not at liberty to resort to a classification that is palpably arbitrary."

In *Air-Way Corporation* v. *Day*, 266 U. S. 71, this Court condemned as arbitary an annual fee payable by each foreign corporation under a statute of Ohio computed upon a charge per share of the entire authorized stock regardless of the value of the stock and the fact that it might not have been issued. It was there said by Mr. Justice Butler (p. 83):—

> "The fee determined by the lower court, as well as that fixed by the state officers, is arbitrary. Without holding that such a charge must be measured by the value of the privilege for which it is imposed, it may be said that some relation to such value is a reasonable requirement."

And further (on p. 83):—

> "The number of non-par value shares of the corporation is not an indication of, and does not purport to be a representation as to, the amount of its capital. Each outstanding share represents merely an aliquot part of its assets. The num-

ber of shares not subscribed or issued has no relation to the privilege held by plaintiff in Ohio, and it is not a reasonable measure of such a fee. Such shares may never be subscribed or issued, or additional shares may be issued to acquire property or do business in other States or to carry on interstate commerce. Plainly the fee, to the extent that it is based on a number of shares in excess of those outstanding, has no relation to what was paid in for the stock or to its value or to the amount of plaintiff's capital, its property or its business, intrastate in Ohio or interstate."

And finally (on p. 85):—

"It is clear that the mere number of authorized non-par value shares is not a reasonable basis for the classification of foreign corporations for the purpose of determining the amount of such annual fees. Such a classification is not based on anything having relation to the purpose for which it is made."

It seems so clear to this Appellant that if the power claimed by the State of Maryland is conceded by the final decision in this case, there is no limit to the amount of the tax which the State authorities may impose against this Appellant or its stockholders, and unless there is protection afforded by the Federal Constitution against the burden of arbitrary taxation, the future usefulness of this Appellant is of uncertain duration. It seems that freedom to tax will clearly result in the exercise of that power to the extent of practical destruction, and this Appellant has therefore appealed to this Court for that protection which may be expected from the language of Mr. Justice Holmes in *Panhandle Oil Company* v. *Knox, supra* (p. 223):—

"The power to tax is not the power to destroy while this Court sits."

The judgment of the Court of Appeals of the State of Maryland should be reversed.

Respectfully submitted,

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APPENDIX.

PUBLIC GENERAL LAWS OF MARYLAND, ARTICLE 81, SECTION 154.

"154. For the purpose of valuing the stock of banking and other private corporations held by non-resident stockholders, it is hereby declared and understood that the stock of banking, insurance or other corporations usually termed moneyed institutions is situate at the place at which the principal office for the transacting the business of such corporation is situated; the stock of a turnpike, railroad, steamboat, canal or other improvement corporation is situate at the place where its principal office for the transaction of business shall be established, if the said office be within the limits of this State, and shall be so assessed, and if not, then the assessable property of such corporation shall be valued and assessed in the county or counties in which said property is situate, and in the city of Baltimore so far as it is situate in said city; and the stock of mining, manufacturing and other like corporations situate at the place where the works of such corporation, or the greater part of their operations, respectively, shall be conducted, shall be assessed in like manner in the county or city where such works are situate.

PUBLIC GENERAL LAWS OF MARYLAND, ARTICLE 81, SECTION 163.

"163. The president or other proper officer of the banks, State and national, and other incorporated institutions in the several counties, the city of Baltimore and other incorporated towns of Maryland, shall annually, on or before the first day of March, furnish to the county commissioners of each county or the appeal tax court of Baltimore city, and the city clerk of each city, town or village incorporated in the State

of Maryland, in which any of its stockholders may reside, a list of the said stockholders, so far as their place of residence may be known to such officer, together with the number of shares of stock held by each. Said list shall show the stockholders of such banks and other incorporated institutions as they stand on the first day of January preceding, together with their residences and the number of shares held by each on said date, and the taxable value of such respective shares of stock, ascertained as hereinafter provided, shall for county and municipal purposes be valued to the owners thereof in the manner hereinafter as of the preceding first day of January of each year, and taxes thereon shall be collected for such banks and other incorporated institutions in the manner hereinafter provided, as of the said first day of January. In case the president or other proper officer of said bank or other corporation fail or refuse to furnish a statement as herein required to the county commissioners or appeal tax court or city clerk aforesaid, on or before the day hereinbefore specified for that purpose, then for each day that shall thereafter elapse until the said statement shall be furnished, the said bank or other corporation shall pay to the county commissioners; or mayor and city council of Baltimore, or other municipal corporation, as the case may be, the sum of one hundred dollars; and for the valuation and effectual collection of taxes asesssed on the stock of banks or other incorporated institutions, held by non residents, the president or other proper officer of the corporation shall annually, on or before the first day of March, make out and deliver to the county commissioners of the county or the appeal tax court, or city clerk of the municipal corporation where said corporation is situate, an account of the number of shares of stock in such corporation held by persons not residents of this State as of the first day of January preceding, and the same shall be valued at its actual cash value, to and in the name of such stockholders, respectively, as of said

first day of January preceding; but the tax assessed on such stock shall be levied and collected from said corporation, and may be charged to the account of such non-resident stockholders in the said corporation, and shall be a lien on the stocks therein held by such stockholders, respectively, until paid, *and in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation* in the several counties and city of Baltimore, whether the shares of said stock are quoted on the market or not; in case of failure or refusal to comply with this requirement the said bank or other incorporated institution shall be liable to the penalty hereinbefore prescribed; and the president and cashier or treasurer of any such bank or other incorporated institution failing to comply in every respect with the provisions of this section shall be liable to indictment therefore, and on conviction shall be fined not less than five hundred dollars nor more than five thousand dollars, in the discretion of the court, and shall stand committed until such fine is paid."

PUBLIC GENERAL LAWS OF MARYLAND, ARTICLE 81, SECTION 166.

"166. At the time of making the returns of stockholders, to the County Commissioners and appeal tax court of Baltimore City, as required by law, the President or other proper officer of every bank or other incorporated institution incorporated under the laws of this State or doing business therein, and of every joint stock company doing business in this State shall furnish to the County Commissioners of each County in which such bank or other incorporated institutions or joint stock company shall own or possess any real property and tools, machinery, manufacturing imple-

ments and engines of corporations actually engaged in manufacturing, and to the appeal tax court of Baltimore City, if such bank or other incorporated institution or joint stock company shall own or possess any real property and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing in said city, a true statement of such real property, and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing, situated or located in such County or City and such real property and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing shall be valued and assessed by said County Commissioners and appeal tax court, respectively, to the said bank or incorporated institution or joint stock company so owning the same, and the said County Commissioners and appeal tax court shall give duplicate certificates of such valuation and assessment to such President or other officer, who shall transmit one of such duplicate certificates with his return to the State Tax Commission, and State, County and City taxes shall be levied upon and paid by such bank or other incorporated institution or by such joint stock company on such assessment in the same maner as the same are levied upon and paid by individual owners of real property and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing in such County or City in accordance with the terms of Section 169 of this Article as amended; the respective taxable value of the shares of stock in such bank, corporation and joint stock companies shall be ascertained by the State Tax Commission in the manner following: He shall deduct the assessed value of such real property and tools, machinery, manufacturing implements and engines of corporations actually engaged in manufacturing belonging to the said respective banks, corporations or joint stock companies from the aggregate value of all shares

of such respective banks, corporations or joint stock companies and divide the remainder by the number of shares of the capital stock or shares of such respective banks, corporations or joint stock companies and the quotient shall be the taxable value of each of such respective shares for State purposes, and all State taxes thereon shall be paid as provided now or hereafter by law, and when the valuation and assessment of the shares of the capital stock or shares or such banks, corporations or joint stock companies shall have been finally determined or made for State purposes, the State Tax Commission shall certify to the County Commissioners of each County where any of the stockholders or shareholders may reside, and to the appeal tax court of Baltimore City, if any of said stockholders or shareholders reside in said City, and to the County Commissioners of the County in which said bank, corporation or joint stock company is situated, or to the appeal tax court of Baltimore City, if it is situated in said City, the assessed taxable value of such respective shares of stocks, or shares so ascertained as aforesaid. And the said taxable value of such respective shares of stock or shares in such banks, corporations or joint stock companies, owned by residents of this State, and taxable within this State, shall for County and Municipal purposes be valued to the owner thereof in the County or City in this State in which such owners shall respectively reside, and the said taxable value of such of said stock or shares as are held by non-residents of this State shall for County and municipal purposes be valued to the owners thereof in the County or City in which said bank, corporation or joint stock company is situated; but all County or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such bank, corporation or joint stock company, and when so paid shall or may be charged by such bank, corporation or joint stock company to the account of such stockholders or shareholders, respectively; but it is expressly

provided that all railroad companies working their roads by steam power incorporated by, or under the laws of this State or any other State, territory, District of Columbia or foreign country and doing business in this State, shall respectively be subject to the annual State tax upon their respective gross receipts within the State, prescribed by Section 172, which shall be paid and collected in a manner provided now or hereafter by law, and the real and personal taxable property belonging to such respective railroad companies shall be subject to County and municipal taxation to this State in the respective Counties and Cities in which such property is located; and where such respective railroad companies are subject to such gross receipts tax for State purposes, their shares of stock and real or personal property shall not be subject to taxation for State purposes, and when such real and personal property of such respective railroad companies is subject to County and municipal taxation, their respective shares of stock shall not be subject to County and municipal taxation, but the capital stock and property of all other corporations which are subject to a tax upon their gross receipts, other than railroad companies, shall be valued, assessed and taxed for State, County and municipal purposes like the capital stock and property of other corporations under this Article."

PUBLIC GENERAL LAWS OF MARYLAND, ARTICLE 81, SECTION 166A.

166A. At the time of making the returns of stockholders to the County Commissioners and Appeal Tax Court of Baltimore City, as required by law, the president or other proper officer of every bank or other incorporated institution incorporated under the laws of this State or doing business therein, and of every joint stock company doing

business in this State, shall furnish to the County Commissioners of each county in which such bank or other incorporated institution or joint stock company shall own or possess any real property, and to the Appeal Tax Court of Baltimore City, if such bank or other incorporated institution or joint stock company shall own or possess any real property in said city, a true statement of such real property, situate or located in such county or city, and the president or other proper officer of every fire and life insurance company incorporated under the laws of this State and doing business therein shall also furnish to the County Commissioners of each county in which it shall have any mortgages on real or leasehold property, and to the Appeal Tax Court of Baltimore City in which it shall have any mortgages on real or leasehold property in such county or city, a list of such mortgages showing the amount then due thereon, and such real property shall be valued and assessed by said County Commissioners and Appeal Tax Court respectively, to the said bank or incorporative institution or joint stock company so owning the same, and the said County Commissioners and Appeal Tax Court shall give duplicate certificates of such valuation and assessment, and of the amount shown to be due on mortgage by such list, to such president or other officer, who shall transmit one of such duplicate certificates with his return to the State Tax Commission, and State, county and city taxes shall be levied upon and paid by such bank or other incorporated institution or by such joint stock company on such assessment in the same manner as the same are levied upon and paid by individual owners of real property, in such county or city; the respective taxable value of the shares of stock in such bank, corporation and joint stock companies, save the taxable value of the shares of the stock of fire and life insurance companies incorporated under the laws of this State and doing business therein, shall be ascertained by the State Tax Commission in the manner following: It shall deduct the assessed value of such real property belonging to the said

respective banks, corporations or joint stock companies from the aggregate value of all shares of such respective banks, corporations or joint stock companies and divide the remainder by the number of shares of the capital stock or shares of such respective banks, corporations or joint stock companies and the quotient shall be the taxable value of each of such respective shares for State purposes; in the case of fire and life insurance companies incorporated under the laws of this State and doing business therein, the taxable value of the shares of the stock thereof shall be ascertained by State Tax Commission in the following manner: It shall deduct the total of the assessed value of any real property belonging to such company and the amount of mortgages owned by such company, as shown by the aforesaid certificate thereof, from the aggregate value of all shares of its capital stock and shall divide the remainder by the number of shares of the capital stock or shares of such respective fire and life insurance company incorporated under the laws of this State and doing business therein, and the quotient shall be the taxable value of such respective shares of such fire and life insurance company for State purposes, and all State taxes thereof shall be paid as provided now or hereafter by law, and when the valuation and assessment of the shares of the capital stock or shares of such banks, corporations or joint stock companies shall have been finally determined or made for State purposes, the State Tax Commission shall certify to the County Commissioners of each county where any of the stockholders or shareholders may reside, and to the Appeal Tax Court of Baltimore City, if any of said stockholders or shareholders reside in said city, and to the County Commissioners of the county in which such bank, corporation or joint stock company is situated, or to the Appeal Tax Court of Baltimore City, if it is situate in said city, the assessed taxable value of such respective shares of stocks, or shares so ascertained as aforesaid. And the said taxable value of such respective shares of stock or shares in such banks, corporations or joint stock companies, owned by residents of this State, and taxable within

this State, shall for county or municipal purposes be valued to the owner thereof in the county or city in this State in which such owners shall respectively reside, and the said taxable value of such of said stock or shares as are held by non-residents of this State shall for county and municipal purposes be valued to the owners thereof in the county or city in which said bank, corporation or joint stock company is situated; but all county or municipal taxes assessed upon said respective taxable value of such respective shares of stock or shares shall be collected from such bank, corporation or joint stock company, and when so paid shall or may be charged by such bank, corporation or joint stock company to the account of such stockholders or shareholders, respectively; but it is expressly provided that all railroad companies working their roads by steam power incorporated by or under the laws of this State, or any other State, Territory, District of Columbia or foreign country and doing business in this State, shall respectively be subject to the annual State tax upon their respective gross receipts within the State, prescribed by Section 172, which shall be paid and collected in a manner provided now or hereafter by law; and the real and personal taxable property belonging to such respective railroad companies shall be subject to county and municipal taxation to this State, in the respective counties and cities in which such property is located; and where such respective railroad companies are subject to such gross receipts tax for State purposes, their shares of stock and real or personal property shall not be subject to taxation for State purposes, and when such real or personal property of such respective railroad companies is subject to county and municipal taxation, their respective shares of stock shall not be subject to county and municipal taxation, but the capital stock and property of all other corporations which are subject to a tax upon their gross receipts, other than railroad companies, shall be valued, assessed and taxed for State, county and municipal purposes, like the capital stock and property of other corporations under this Article.

ACT OF THE GENERAL ASSEMBLY OF MARYLAND 1908, CHAPTER 268, SECTION 5 (A PART OF APPELLANT'S "1908 CHARTER").

"SEC. 5. And be it further enacted, That in consideration of the construction by the said Susquehanna Power Company, its successors or assigns of a dam or dams in, along or across the said river and its shores and the canals, railroads, ferries or highways thereon, therealong or leading thereto, and backing the waters of said river, thereby either singly or in series to the elevation to which said dam or dams may be erected, and either with or without the aid of the canals hereinafter mentioned, said Susquehanna Power Company, its successors and assigns be and it is hereby declared to be also a slack water navigation company with all the powers and authorities of the charters of the Tidewater Canal Company and the proprietors of the Susquehanna Canal to the end that *in aid of the powers of Congress* it may create a safe and practicable navigation up and down said river, either upon the bed thereof, by means of said back water or otherwise, or by means of a canal or canals along the margin thereof, or by means of such methods conjointly, either above or below said dam or dams, to the end that real navigation of said river above tidewater in Maryland heretofore so often unsuccessfully attempted, may now be established, and in addition to its present powers, the said Susquehanna Power Company, its successors and assigns, is hereby vested with the following exclusive powers, liberties, privileges, benefits, franchises and immunities, that is to say:

"(*a*) To cut, re-cut or enlarge canals along the shores of said river, with dimensions commensurate with the beam, displacement tonnage and motive power of all vessels which shall navigate the back water formed by its said dam or dams, and erect, equip and maintain all dams, feeders, aqueducts, locks, wharves and basins,

and such other appurtenances and accessories thereto as may be necessary, and in order to acquire the necessary property for each of the objects aforesaid, shall have all the powers of section 3 herein as well as such powers contained in said charters of the proprietors of the Susquehanna Canal and Tidewater Canal Company as are duly applicable to such acquisition without limit to the quantity of land to be condemned except the necessity of said corporation as by it determined.

"(*b*) To acquire own and hold by purchase or otherwise the stock, franchises, property or assets of, or exchange stock with, merge with or consolidate with the said Tidewater Canal Company or the proprietors of the Susquehanna Canal or the 'Susquehanna Canal and Power Company' a corporation of Pennsylvania or of any other corporation or association, whatsoever or wheresoever, and also to assume pay or guarantee any indebtedness or contracts of any other corporation or association on such terms or conditions as may be mutually agreed upon.

"(*c*) To charge and collect tolls for the navigation of the bed of said river above its dam or dams or of the tail races thereof, not exceeding the rate of two cents per ton per mile, as a remuneration to said corporation for the improvements aforesaid."

FOURTEENTH AMENDMENT OF FEDERAL CONSTITUTION.

Section 1 of Article XIV of the Amendments of the Federal Constitution:—

"SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuni-

ties of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

COMMERCE CLAUSE OF FEDERAL CONSTITUTION.

Article I, Section 8 of the Constitution of the United States:—

"SECTION 8. The Congress shall have Power * * *.
"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

* * * * * * *

U. S. C. A., TITLE 28, SECTION 344, SUB-SECTION (a).

"SUB-SECTION (a)—A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 369.

THE SUSQUEHANNA POWER COMPANY, Appellant,

v.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

APPELLANT'S REPLY TO APPELLEE'S MOTION TO DISMISS OR AFFIRM.

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Supreme Court of the United States.

OCTOBER TERM, 1930. No. 369.

The Susquehanna Power Company, Appellant,

v.

State Tax Commission of Maryland.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

APPELLANT'S REPLY TO APPELLEE'S MOTION TO DISMISS OR AFFIRM.

The Appellant heretofore filed its "Statement As To Jurisdiction On Appeal," and in due course this Court noted probable jurisdiction and postponed further consideration to the hearings on the merits. The Appellant filed its Brief on the merits of the appeal and thereafter a Motion to Dismiss or Affirm and a Brief in support thereof was filed by the Appellee, although no such brief was filed pursuant to Rule 12 of this Court in reply to the "Statement As To Jurisdiction On Appeal."

The Appellant refers this Court to its memorandum in support of the Statement as to Jurisdiction on Appeal and to the Brief on the merits of this cause in support of the

right of the Appellant to be in this Court on appeal from the judgment of the Court of Appeals of the State of Maryland pursuant to the provisions of Title 28 U. S. C. Section 344 (a).

The Appellant asserts its claim with confidence under that section, but suggests to this Court that if, for reasons that seem to it sufficient, the proper writ would be that of *certiorari* under Section 344 (b), that the Record in this case clearly justifies this Court in taking jurisdiction, by considering the papers on appeal as in the nature of a petition for writ of *certiorari* and maintaining its jurisdiction pursuant to the mandate of Section 344 (c).

The Brief for the Appellee makes certain admissions to which the particular attention of the Court is directed, and also makes certain assertions which appear to the Appellant to be without sufficient foundation in fact or in law, and, as to these, a brief statement will be made.

There are three questions raised for the consideration of this Court by the Motion to Dismiss, and for the purpose of this reply they will be considered in the order presented in the Brief of the Appellee (p. 5):—

> (1) "The contention that the 'minimum provision' imposes an invalid tax upon the shareholder is wholly unsubstantial."

The provisions of the statute (Section 163 of Article 81 of the Maryland Code) containing this minimum provision will be found in the Appellant's Brief on the merits (pp. 35-37). As to this the Appellee says (Brief, p. 8):—

> "In other words, the Court of Appeals found that the Commission had properly ascertained the value of the shares to be $28,726,132 even after making allowance for the company's outstanding indebtedness, and this conclusion of fact upon which the decision of the Court of Appeals rested finds support in the record. For it there appears that the company has a fixed investment of $45,677,316.60 (r. 11) upon which, by the

terms of the lease from the company to the Philadelphia Electric Company it is guaranteed a net return of 7% plus taxes, expenses and depreciation (r. 34-35).

"It follows that the decision of the Court of Appeals in so far as it relates to the minimum provision, rests upon an adequate non-federal ground, and furnishes no basis for the jurisdiction of this court under 28 U. S. C. 344 (a)."

In this statement the Appellee is in error because the facts do not show a net return of 7% upon $45,677,316.60. An abstract of the "Lease of Maryland Properties" upon which the gross return to Appellant is based is set forth on pp. 272-275 of the Record in Case No. 368 which shows the rental to be 7% of "the actual legitimate investment" of Appellant in the project. The provisions of this lease showing payment of additional items as rent are set forth in full as Article *Sixth* on p. 263 of the Record in Case No. 368. (There was no change of this Article *Sixth* in the final modifications of this Lease which are shown on pp. 235-238 of the Record in Case No. 368.) An examination of said Article *Sixth* shows clearly that the Lessor (this Appellant, described as Corporation "A" in the Lease), does not receive as additional rental any *interest* on bonds or other indebtedness. This fact was called to the attention of the State Tax Commission by counsel for the Appellant on p. 50 of Record in Case No. 369 when he said:—

"There is no question but that bond interest is paid out of the rent."

It follows from the conceded facts that the income of the Appellant cannot exceed 7% upon its actual investment, which investment, for the purposes of this case, may be taken at the figure shown in the Record of this case (p. 11), *i. e.*, $45,677,316.60. The deductions from rental appear (R. 8) as "Expenditures and Charges" and show, as stated in the Return of the Appellant to the State Tax Commission, no net revenue for the year ending December 31, 1928,

as of which date the Return in question was made. This probably was due to the fact that the year in question included the period of final construction when neither the indebtedness nor the investment were fixed sums throughout the whole year, but increased disproportionately. The Appellant will ignore, for the purpose of the argument herein made, the fact that the Record actually shows no earnings available for dividends on the stock of this Company as of December 31, 1928, and approaches the consideration of net earnings available for dividends on the assumption that the project having been completed prior to January 1, 1929, earnings and interest charges would be for consideration during 1929 on the basis of the total investment and the total indebtedness throughout the whole of that year shown as of January 1, 1929, and that even upon such a consideration the assessed valuation of $28,726,132 (Rec. p. 13) of the stock of this Company based on net earnings, as contended in the Brief of the Appellee (p. 8), cannot be sustained. The following computation shows the maximum valuation that can be arrived at, based upon a capitalization of net earnings available for dividends:—

Total investment in Project in Maryland (R. pp. 11, 28)	$45,797,111.42
Rental at 7% of above (R. p. 35)	$3,205,797.80
Less 5½% interest on Indebtedness of $41,954,998.92 (R. 9, 10)	2,307,524.94
Available for Dividends not in excess of	$898,272.86
$898,272.86 capitalized at 7% shows a value for total capital stock to be not in excess of	$12,832,469.43

When this last figure is used and the assessed value of real property $22,726,132 (R. p. 13) is deducted no taxable value can be shown for the shares of stock.

The Record shows that there were no sales of the stock of the Appellant during 1928 and therefore no market-value could be taken into consideration in arriving at the assessed value (Rec. p. 8, Par. 14).

The Record further shows that the net assets or net worth of the Company, taking into consideration its conceded indebtedness, was not in excess of the sum of $4,866,-886.36 (Rec. p. 10).

It follows from the foregoing undisputed facts that the valuation fixed by the State Tax Commission could not have been based upon market value, net earnings or net assets. The statement of the learned Court of Appeals, therefore (Rec. p. 69) that:—

> "nor does it appear that the assessment was in fact higher than the fair value of the stock assessed,"

is without foundation in fact, ignores the "actualities" and can only be sustained by assuming that the State Tax Commission was justified in complying with the mandate of the minimum provision of the taxing statute herein assailed in fixing the aggregate assessed value of the shares at the sum of $28,726,132 (R. p. 13). The Appellee appears to concede that there is no foundation *in fact* for the assessment made, but justifies the minimum provision of Section 163, of Article 81 of the Maryland Code, by the argument in the Brief of Appellee (pp. 9-15, inclusive) in which, *inter alia*, it is said:—

> "The tax on the shares, in so far as the minimum provision is invoked, is a direct tax on the shareholders as owners without regard to the corporate entity, based not on the value of their shares but on the value of the corporation's tangible personalty located in the State, which would otherwise be exempt from taxation." (Appellee's Brief, p. 11.)
>
> "In other words, as construed by the Court of Appeals, the minimum provision undertakes to disregard the corporate entity and to assess to each share-

holder a proportionate part of the full value of all tangible personal property belonging to the corporation and having a situs for taxation in the State of Maryland, without regard to any indebtedness. Manifestly the State might have assessed this tangible personalty direct to the corporation. The State, however, elected to exempt the corporation as such from taxation on this property, and to impose the burden on the shareholders." (Appellee's Brief, p. 14.)

The Appellant refers this Court to the argument made in its briefs heretofore filed, and to the decisions of this Court with which it is so familiar, as a complete answer to this attempted support of the condemned statute.

The next reason presented why this Court has no jurisdiction (Appellee's Brief, p. 5) is:—

(2) "The contention that a State may not tax the shares of capital stock of a domestic corporation, where the shares are owned by non-residents is foreclosed by prior decisions of this court."

This question is disposed of by the Appellee by the statement that it has been decided contrary to the contention of the Appellant by this Court in *Beidler* v. *South Carolina*, 72 Law Ed. 69 (Brief of Appellee, p. 16). Counsel for the Appellant have been unable to find in the opinion of Mr. Chief Justice Hughes in the last cited case, support for this assertion and therefore refer the Court to the authorities heretofore cited in the brief for the Appellant on the merits (pp. 11-20 inclusive).

Appellee finally asserts (Appellee's Brief, p. 5):—

(3) "The contention that the State, in assessing shares of capital stock for purposes of taxation, may not include value attributable to a federal license, is foreclosed by prior decisions of this court."

In answer to this assertion of Appellee the Appellant relies upon the argument and authorities in the Brief for Appellant

on the merits (pp. 20-27 inclusive). It appears to be conceded by the Appellee that a value was given to the shares of stock of the Appellant attributable to the Federal License. The right of the State Tax Commission to include such a value is sustained by the learned Court below in its opinion (Rec. p. 70; Appellant's Brief on merits, p. 21). The issue seems to be clearly raised between the Court of Appeals of Maryland and counsel for the Appellee on the one hand and the decisions of this Court cited in Appellant's Brief on the other.

Whether or not, if this were the sole question before this Court, it could be properly brought within its jurisdiction by appeal from the State Court, would seem to be a moot question in this case, because it would appear that, for other reasons, the case is properly here on appeal, and therefore as this question was raised before, and decided by, the State Court, adversely to the contention of the Appellant, it will be considered by this Court together with the other questions within its jurisdiction under Section 344 (a). If not thus within the jurisdiction of this Court, this question would appear to have been properly raised, and may be for consideration by treating the papers on appeal, as to this question, as though a petition for writ of *certiorari* to the learned Court below on the ground of the denial of the immunity claimed by reason of the Federal franchise.

CONCLUSION.

It is respectfully submitted that the above entitled cause is within the jurisdiction of this Court for the reasons given, and that the questions raised upon the merits of the cause may all be fully considered and disposed of.

Respectfully submitted,

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WM. CLARKE MASON,
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A. ALLEN WOODRUFF,
Counsel for Appellant.

FILE COPY

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 369.

SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

MOTION OF APPELLEE TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

WM. P. LANE, JR.,
Attorney General of Maryland,
WM. L. MARBURY, JR.,
Assistant Attorney General of Maryland,
TYDINGS, LEVY & ARCHER,
CHAS. H. MACNABB,
Counsel for Appellee.

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OCTOBER TERM, 1930.

No. 369.

SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

MOTION TO DISMISS OR AFFFIRM.

Comes now the appellee in the above entitled cause, by its counsel of record, and moves that the appeal herein be dismissed or that the judgment of the Court of Appeals of Maryland be affirmed for the reason that the decision of the lower Court was based upon non-federal grounds adequate to support the judgment, and that the questions on which the decision in this case depends, are so unsubstantial as not to need further argument.

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WM. L. MARBURY, JR.,
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TYDINGS, LEVY & ARCHER,
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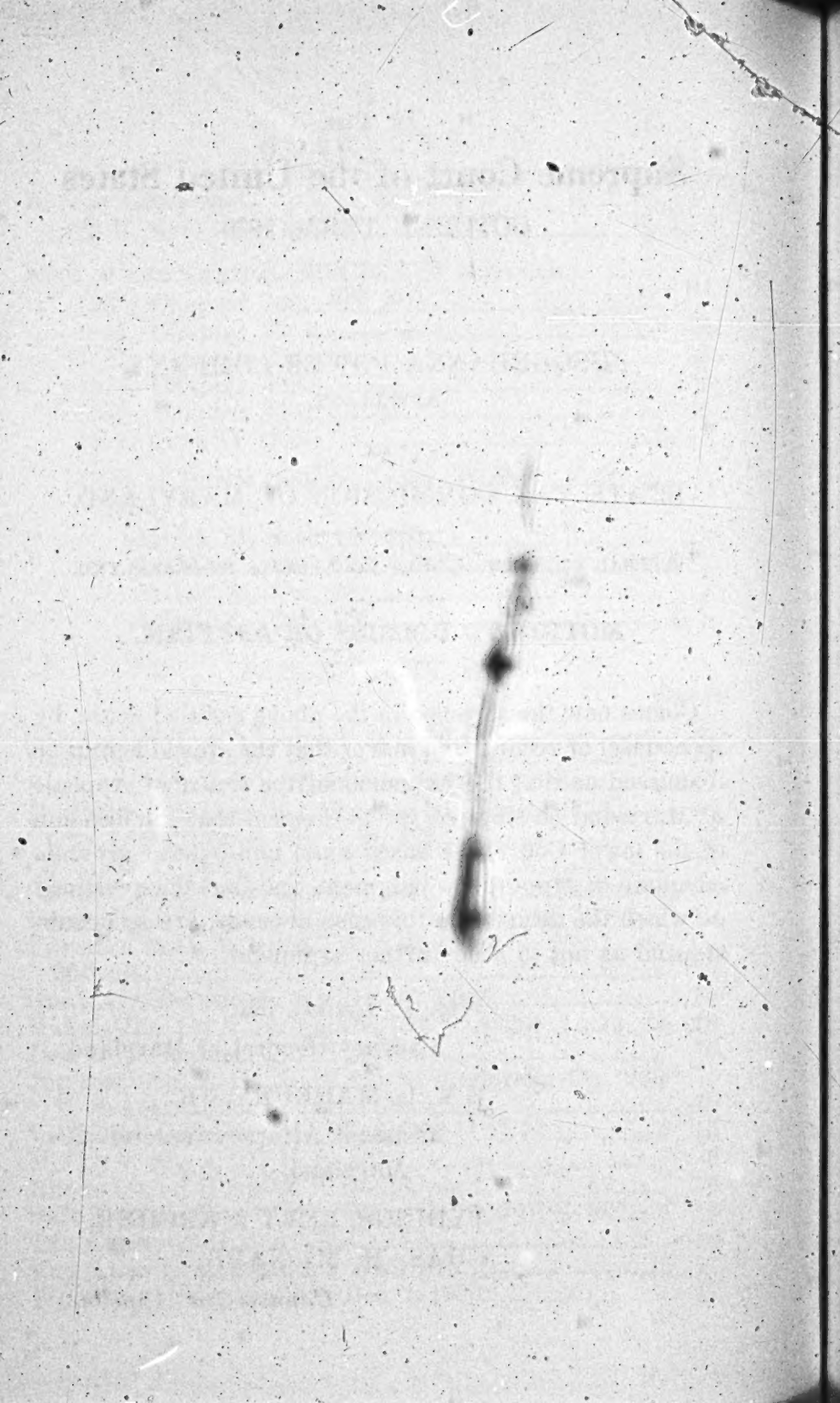

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 369.

SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

A.

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Appeals of Maryland was rendered on June 12th, 1930, and has not yet been officially reported. It is printed in the record (r. 64-73) and may be found in 151 Atl. 39.

B.

THE STATUTE AS TO JURISDICTION.

The jurisdiction of this court is sought to be rested upon 28 U. S. C., Sec. 344 (a), which is cited in full in the appellant's "Statement As To Jurisdiction On Appeal."

C.

STATEMENT OF THE CASE.

On October 10th, 1929, the State Tax Commission of Maryland, acting under Sections 154-170 of Article 81 of the Code of Public General Laws of Maryland (Bagby's Edition, 1924), entered a gross tentative assessment against the appellant, a Maryland corporation, of $28,726,132, representing the value of the shares of the appellant's capital stock. After certain deductions required by law, a net assessment remained of $6,000,000 (r., 5, 6). The appellant protested, a hearing was had before the Commission, and the tentative assessment was made final (r. 6). Thereupon an appeal was taken to the Circuit Court of Harford County under Article 81, Sections 253 and 259 of the Code, claiming that the State Tax Commission, acting upon erroneous conclusions of law, had arrived at an assessment greatly in excess of the true assessable value of the shares (r. 3) and praying that the action of the State Tax Commission be set aside. This petition was subsequently supplemented by a petition for a rehearing, filed in the Circuit Court for Harford County, which petition was granted (r. 55-57). On January 20, 1930, that Court entered an order affirming the action of the State Tax Commission (r. 57) from which order an appeal was taken to the Court of Appeals of Maryland (r. 59). That Court affirmed the judgment below accompanying its action by an opinion delivered by Offutt, J., which contains a complete statement of the facts and the law applicable to the present appeal (r. 64-73).

The assignments of error (r. 61-63), which are reiterated by the appellant in its "Statement Of The Points To Be Relied Upon" (r. 73-74), assert that the assess-

ment which the Court of Appeals refused to disturb is repugnant to the Constitution of the United States (a) in that it deprived the appellant of property without due process of law, contrary to the provisions of the 14th Amendment, and (b) in that it imposed a direct tax upon a federal instrumentality.

Due process was claimed to have been denied on the basis (1) that the value of the shares of capital stock was fixed by a method wholly arbitrary and without relation to their real value, pursuant to the "minimum provision" of Section 163 of Article 81 of the Code, that:

> "In no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several Counties and City of Baltimore, whether the shares of said stock are quoted on the market or not; * * *"

and (2) that the owner of all the shares of capital stock of the appellant is a resident of the State of Pennsylvania where the said shares are taxable, and that the assessment thereof in the State of Maryland is double taxation.

The contention that the action of the State Tax Commission imposes a direct tax upon a federal instrumentality is based on the theory that the value fixed as the basis for the appellant's capital stock includes a value attributable to a federal license granted by the Federal Power Commission.

ARGUMENT.

SUMMARY.

I. The record does not show that the assessment was based upon the "minimum provision" of which the appellant complains; nor that the appellant is a licensee of the Federal Government; nor that the State Tax Commission, in assessing the appellant's stock, included a value attributable to any license issued by the Federal Power Commission.

II. The contention that the "minimum provision" imposes an invalid tax upon the shareholder is wholly unsubstantial.

III. The contention that a State may not tax the shares of capital stock of a domestic corporation, where the shares are owned by non-residents is foreclosed by prior decisions of this court.

IV. The contention that the State, in assessing shares of capital stock for purposes of taxation, may not include value attributable to a federal license, is foreclosed by prior decisions of this court.

I.

The contention that the State Tax Commission assessed the appellant's shares of stock at an arbitrary or fiat value is based upon the following language contained in Section 163 of Article 81 of the Code:

> "and in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several

counties and city of Baltimore, whether the shares of said stock are quoted on the market or not; * * *."

It is the contention of the appellant that the value of its shares of stock is wholly unrelated to the value of the real and personal property located in the State of Maryland, and that the section in question is for this reason invalid.

This contention rests upon the assumption of fact that the State Tax Commission, in valuing the appellant's capital stock, invoked this so-called "minimum provision." But the Court of Appeals *expressly found the contrary.* In discussing the action of the State Tax Commission in refusing certain requested rulings (r. 5, 6) based upon the alleged invalidity of this "minimum provision," Judge OFFUTT said (r. 67) (italics ours):

> "The next objection is that the Commission erred in its rulings on the instructions submitted by the appellant. The first answer to that objection so far as it relates to the first, fourth and fifth instructions, is that they are mere legal abstractions which are not shown to have any relation to the action of the Commission or the evidence before it. * * *"
>
> "The fourth and fifth instructions presented the proposition that the mandate in Sec. 163, Article 81, Code, that in no case shall the stock of a corporation in the aggregate be valued at less than the full value of the real estate and chattels held by or belonging to such corporation is unconstitutional. But in view of the express declaration of the Chairman of the Commission that in valuing the stock the Commissioner considered the "net" assets of the corporation, *it cannot be assumed that its action was affected by that mandate, nor does it appear that the assessment was in fact higher than the fair value of the stock assessed.*"

In the same connection must be considered the following passage from the opinion below (r. 66) (italics ours):

> "Taking the second of these questions it cannot be fairly said that the Commission failed to state the reasons which affected its action. For when Mr. Howard, of counsel for the Company suggested at the hearing, 'We would know better how to proceed if the Commission would give us some idea how they arrived at this tentative value of $6,000,000,' the chairman of the Commission replied, 'We made the assessment in accordance with the law. The three elements mentioned by the law-market value of the stock, *net earnings* and net assets, were taken into consideration.'"

And the concluding paragraph of the opinion is also relevant (r. 72):

> "The only remaining question is whether there is anything in the nature of the assessment itself or apparent on the face of the record which can justify the inference that the assessment was not fairly and justly made. In the absence of any showing to the contrary it will be presumed that members of the Commission acted fairly and in good faith, and that the assessment is correct. Cooley on Taxation, Secs. 1073, 1011. And the record contains nothing which can affect that presumption. It is undisputed that the fixed investment of the Company in Maryland is $45,677,316.90. The aggregate assessment made by the Commission was $28,726,132 and from that the amount of the assessment of the real estate $22,726,132 was deducted leaving a balance of $6,000,000, which was allocated to the stock. There is no contention in this case that the aggregate assessment is excessive, or that the valuation of the real estate as such was unreasonable, and we can find nothing in these findings which were based upon information furnished by the Company, or elsewhere in the record, which affects the validity of the assessment which is the subject of this appeal, and the order appealed from will therefore be affirmed."

In other words, the Court of Appeals found that the Commission had properly ascertained the value of the shares to be $28,726,132 *even after making allowance for the company's outstanding indebtedness*, and this conclusion of fact upon which the decision of the Court of Appeals rested finds support in the record. For it there appears that the company has a fixed investment of $45,677,316.60 (r. 11) upon which, by the terms of the lease from the company to the Philadelphia Electric Company *it is guaranteed a net return of 7% plus taxes, expenses and depreciation* (r. 34-35).

It follows that the decision of the Court of Appeals in so far as it relates to the minimum provision, rests upon an adequate non-federal ground, and furnishes no basis for the jurisdiction of this court under 28 U. S. C. 344(a):

McCoy v. Shaw, 277 U. S. 302.

Nor does the record show that the appellant is a licensee of the Federal Government. But doubtless the absence from this record of the license which is printed in full in the record in No. 368, Susquehanna Power Company v. State Tax Commission, is the result of an inadvertance, of which counsel for the appellee do not desire to take advantage.

The claim that the action of the State Tax Commission imposes an unconstitutional burden upon a federal instrumentality rests upon the refusal by the State Tax Commission of a request for a ruling that no value be given to the capital stock in excess of the value of the real estate and chattels, real or personal, for the reason that any

greater valuation of the capital stock would necessarily include the value of the license granted by the Federal Power Company (r. 5). The Court of Appeals held that there was no evidence that the State Tax Commission had included the value of the federal franchise (r. 70), and this conclusion is hard to escape in view of the undisputed testimony in the record that the investment in tangible personalty of the appellant, located in the State of Maryland, amounted to $8,131,341.43 (r. 51). If the minimum provision was invoked, it is apparent that the assessment did not necessarily include any other item of value. If on the other hand, the minimum provision be disregarded, there is evidence as to the net earnings amply sufficient to justify the assessment placed upon this stock without regard to the value of the federal franchise. Plainly net earnings do not necessarily reflect the value of a franchise.

II.

If it be assumed, contrary to the conclusion of the Court of Appeals, that the State Tax Commission in assessing the appellant's shares of stock invoked the minimum provision of Section 163 of Article 81 of the Code, it is nevertheless submitted that there is not the slightest basis for the claim that this provision deprived either the appellant or its shareholders of any constitutional rights. The system adopted by the State of Maryland for the taxation of the property of domestic corporations and of their shareholders, far antedates Chapter 268 of the Acts of 1908, whereby the appellant was incorporated. The minimum provision originated in this manner: Prior to 1841, the real and tangible personal property of corporations was taxed to the corporation at its full value. By Ch. 23 of

the Acts of 1841, the intangible personal property of a corporation was exempted from taxation and a new tax was imposed upon the shares of stock in any bank, institution or company incorporated by this State. The validity of that act was challenged in *The Tax Cases*, 12 G. & J. 117, where it was held that the State could not tax both the property of the bank and the shares of stock in the hands of the shareholders.

See:

Gordon v. Baltimore, 5 Gill 236.
County Commissioners v. Bank, 48 Md. 118.

This decision led to the enactment of Chapter 266 of the Acts of 1847, by Section 5 of which it was provided that the assessed value of the corporate real estate and tangible personalty should be deducted from the aggregate value of the capital stock of the corporation in ascertaining the tax to be paid by the corporation on behalf of the shareholders.

In 1874 it was determined to abandon the system of direct taxation of the real and tangible personal property of corporations and accordingly, by Acts 1874, Ch. 483, Sec. 3, (amended by Acts 1878, Ch. 413, Sec. 3), all corporations having shares subject to taxation were exempted from *any taxation on their real or personal property. In order to prevent the property thus exempted from escaping all taxation*, the same Act included the minimum provision (Acts 1874, Ch. 483, Sec. 87). Subsequently, by Acts 1896, Ch. 120, Sec. 2, the direct tax on corporate real property was restored, together with the requirement that the assessed value of the real property should b-

deducted from the aggregate value of the shares (see Sec. 141 of that Act).

The obvious intent of the Legislature was to restore the direct tax on real property but to preserve an indirect tax in the form of a tax on shares, equal in amount to the full value of the corporation's tangible personal property located in the State, (exempt from taxation to the corporation itself), and to any excess value which the shares might have over and above the value of the real and personal property thus taxed. The tax on the real property is a direct tax on the corporation. The tax on the shares, in so far as the value thereof exceeds the value of the real and tangible personal property located in the State, is a true share tax, payable by the shareholders and measured by the fair value of their shares. The tax on the shares, in so far as the minimum provision is invoked, is a direct tax on the shareholders *as owners without regard to the corporate entity*, based not on the value of their shares but on the value of the corporation's tangible personalty located in the State, *which would otherwise be exempt from taxation.*

That this is the true interpretation of the "minimum" provision, was expressly laid down by the Court of Appeals in the opinion below, from which we quote the following (r. 69): (Italics ours.)

> "There is in this State no direct tax on the personal property of the corporation, Code Art. 1, Sec. 163, and the value of the real estate upon which there is a direct tax, is deducted from the aggregate value of both its real and personal property before its stock is finally valued for assessment. *So that the final assessment of the shares in so far as it repre-*

sents tangible property includes no part of the value of the real estate but is based upon the value of the personal property alone, and that situation is not materially different from what it was in 1874 *when that provision first found its way into the law.* As the law then stood the property of corporations was assessed indirectly through their stock, and the provision meant no more than saying that their holdings of real and personal property, should be assessed to the owners thereof without regard to liens or incumbrances. And while the law has been changed so as to permit the direct taxation of real property held by corporations, the change did not invalidate that provision, because under the amended law the value of the real property was excluded from the valuation of its stock, and that valuation represented only the tangible and intangible personal property of the corporation, without regard to any liens thereon. And since it could have taxed such property directly without reference to such liens there is no valid reason why it may not be taxed indirectly through appellant's capital stock, on an assessment made without reference to liens or debts, for in neither case would the corporation be called upon to pay taxes upon more than the asesssable value of its property. And there is no possible basis for the contention that the method adopted subjects any of the corporate property to double taxation. For under it the realty is subjected only to direct taxation, and the personal property only to indirect taxation, based in both instances on the fair value of the property taxed."

See also *Anne Arundel County v. Sugar Ref. Co.*, 99 Md. 481, from which we quote the following (p. 488):

"Under our system of assessment of property for taxation, all real estate is assessed to the owner in the county in which it lies, and all personal property belonging to natural persons resident in this State is assessed to the owner in the assessment district in which he resides, with the exception of goods and chattels (taxable as such) permanently located in any

other city or county, which are assessed to the owner where they are so located. The personal property of corporations of this State, not having a capital stock whose shares are subject to taxation, is assessed in like manner to such corporations. All existing assessments of property in this State were made either by assessors appointed in each assessment district under the last General Assessment Act, ch. 120 of 1896, or have been added by the County Commissioners since that time under powers conferred by that Act, and by subsequent enactments; the real property of all corporations is taxed by the county assessors, or County Commissioners, but these have no power to value or assess the personal property of corporations having a capital stock whose shares are subject to taxation. The State Tax Commissioner alone is authorized to value and assess such shares, and may examine on oath any officer of such corporation as to the aggregate value of such shares. This aggregate value is the value of all the taxable property of every description owned by said corporation. The taxable value of such shares is ascertained under the law by deducting from their aggregate value, the certified taxable value of the real estate of the corporation and dividing the residuum by the number of the shares, the quotient showing such taxable value. The State Tax Commissioner certifies this taxable value to the County Commissioners of each county, in which any stockholder resides, and the shares of any such stockholders are valued for county and municipal purposes to the owners in the counties in which they respectively reside."

It is true, as was noted by this court in *Corry v. Baltimore*, 196 U. S. 466, and in *Hannis Dist. Co. v. Baltimore*, 216 U. S. 285, that the tax is, *in form*, a tax upon the shares and not upon the capital stock, but in so far as the fair value of the shares is not more than the fair value of the real and tangible personal property located in the State, the tax is, *in effect*, a tax on the property held by

the corporation on behalf of the shareholders, rather than on the shares themselves. In other words, as construed by the Court of Appeals, the minimum provision undertakes *to disregard the corporate entity and to assess to each shareholder a proportionate part of the full value of all tangible personal property belonging to the corporation and having a situs for taxation in the State of Maryland, without regard to any indebtedness.* Manifestly the State might have assessed this tangible personalty direct to the corporation. The State, however, elected to exempt the corporation as such from taxation on this property, and to impose the burden on the shareholders.

The appellant concedes that this tangible personalty might be assessed to the corporation *without regard to any corporate indebtedness* just as a mortgagor may be taxed on the full value of mortgaged real estate. Why then may not the State of Maryland, which alone gave corporate existence to the appellant, *elect to disregard that corporate existence for purposes of taxing tangible personal property located within its boundaries?* Surely the Legislature may to this extent qualify the corporate personality *which it alone has power to create.* As the corporation itself is not taxed, no possible unfairness is involved. The purpose of the provision is to require the corporation's physical property to bear a tax burden *equal to that borne by similar property owned by an individual, against which no allowance is made for indebtedness.* Manifestly the governmental protection and benefits are the same in each case.

A different question might have been presented, if the appellee had been imposing this tax upon the shareholders of corporations incorporated prior to 1874 but when

the Susquehanna Power Co. obtained its charter from the Legislature of Maryland, it was advised of the fact that the system of taxation of which it now complains had been in effect for more than thirty years. A shareholder who purchases stock in that corporation must accept that stock subject to the terms of the charter, which includes the taxing laws of the State.

Corry v. Baltimore, 196 U. S. 466;
Interstate Consol. Street R. Co. v. Massachusetts, 207 U. S. 79, 84.
International & G. N. R. Co. v. Anderson Co., 246 U. S. 424, 433.
Cream of Wheat Co. v. County of Grand Forks, 253 U. S. 325, 328.

III.

The contention that the State of Maryland is not authorized to tax the appellant's capital stock for the reason that the shares are owned entirely by a non-resident seems wholly unsubstantial. If, contrary to the finding of the Court of Appeals, the State Tax Commission invoked the minimum provision, then it is clear that no question of double taxation can arise. The power of the State of Maryland to tax tangible personal property located in that State, though owned by a non-resident, is too well established to require discussion, and it is equally clear that no question of double taxation can arise by reason of the fact that a State imposes a tax on the property of the corporation within its borders and also upon the shares in the hands of the shareholders.

Van Allen v. Assessors, 3 Wall. 573.
Bank of Commerce v. Tennessee, 161 U. S. 134.

If the same State may tax both the corporate property and the shares in the hands of the shareholders without double taxation, how much clearer must it be that no such question can arise when the acts of different sovereignties are involved.

If, on the other hand, the State Tax Commission found it unnecessary to invoke the minimum provision by reason of the fact that the fair value of the appellant's shares exceeded the value of its real and personal property located in the State, then the tax must be regarded as a true share tax on the shareholders in a domestic corporation, and as such well within the power of the State of incorporation.

Corry v. Baltimore, 196 U. S. 466.
Hannis Dist. Co. v. Baltimore, 216 U. S. 285.
Hawley v. Malden, 232 U. S. 19.
Cream of Wheat Co. v. County of Grand Forks, 253 U. S. 325.
Rhode Island Hospital Trust Co. v. Doughton, 270 U. S. 69.

The contention of the appellant that these cases have been overruled by

Safe Deposit and Trust Co. v. Virginia, 280 U. S. 83.
Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204.
Baldwin v. Missouri, 281 U. S. 586.

is completely refuted by the decision of this court in *Beidler v. South Carolina,* decided November 24th, 1930.

IV.

The contention that the State in assessing the appellants' shares of stock for purposes of taxation may not include value attributable to a federal license is completely disposed of by cases which have been decided by this court at the present term. Of course, insofar as the minimum provision is invoked, the value of a federal franchise must be excluded, but as has heretofore been pointed out, the undisputed testimony shows that the investment of the appellant in tangible personalty located in the State of Maryland, amounts to at least $8,000,000 (r. 51) and as the total assessment on the capital stock was only $6,000,000, there is no basis for the contention that the value of the federal franchise was included.

Assuming, however, that the State Tax Commission disregarded the minimum provision and valued the appellant's shares of stock upon consideration of net assets, net earnings and market value (r. 70), then it was perfectly proper for the State Tax Commission to include the value of the federal franchise and by so doing, no unconstitutional burden was imposed upon a federal instrumentality.

Van Allen v. Assessors, 3 Wall. 573.
Willcuts v. Bunn, decided Dec. 2, 1930.
Educational Films Corp. v. Ward, decided Jan. 12, 1931.

CONCLUSION.

Inasmuch as the present appeal presents no substantial federal question not foreclosed by prior decisions of this Court, it is respectfully submitted that this is an

appropriate case to follow the precedent established in *Hannis Dist. Co. v. Baltimore,* 216 U. S. 285, where a similar appeal was dismissed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 369.—October Term, 1930.

The Susquehanna Power Company, Appellant, *vs.* State Tax Commission of Maryland.	Appeal from the Court of Appeals of the State of Maryland.

[April 13, 1931.]

Mr. Justice Stone delivered the opinion of the Court.

This case is here on appeal, § 237 Jud. Code, as amended by Act of January 31, 1928, from a judgment of the Court of Appeals of Maryland, — Md. —, 151 Atl. 39, upholding an order of appellee, the State Tax Commission, which fixed an assessment on the capital stock of appellant, for 1929 taxation, at $6,000,000.

The assessment was made under the provisions of Art. 81, §§ 154, 163, 166 and 166-A of the Maryland Code. Sections 163, 166 and 166-A impose a tax on the capital stock of every domestic corporation, which "shall be collected from" the corporation, and which, when paid, may be charged to stockholders, and is a lien upon their stock. At the time of the adoption of § 163, corporations were exempt from taxation on their real and personal property; but § 163 provided that "in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation". Direct taxation of real property of domestic corporations was restored by Laws, 1896, c. 120, § 1 (2); and by § 166-A, *supra*, it was provided that in assessing the stock of corporations for taxation, the taxable value should be ascertained by deducting the assessed value of the corporation's real estate from the aggregate value of all its stock.

Appellant is a Maryland corporation, and has been granted a license by the Federal Power Commission. Acting under it, it has constructed a dam on the Susquehanna River, in connection with which it has established and is operating a power project.

See *Susquehanna Power Co.* v. *State Tax Commission*, — U. S. —, decided this day. All its shares of capital stock are owned by the Philadelphia Electric Power Company, a Pennsylvania corporation, with its only place of business in that commonwealth. The report of appellant to the Commission for the assessment of its capital stock showed its gross assets to be $46,821,885.28, of which its tangible personal property was not less than $6,000,000, its total liabilities $41,954,998.92, and its net worth $4,866,886.36. The order of the Commission fixed the aggregate value of the capital stock at $28,726,132, from which it deducted $22,726,132, the assessed value of its real estate, leaving $6,000,000 as the assessed value of the stock.

Appellant challenges the taxing statute, as applied, on the ground that it violates the due process clause of the Fourteenth Amendment, because the assessed valuation required by it is arbitrary and excessive, and because it imposes a tax on intangible shares of stock owned by a non-resident, which have a situs, for purposes of taxation, only at the owner's residence. Appellant also assails the statute on the ground that, as the assessed value of the capital stock includes a value attributable to the license granted to appellant by the Federal Power Commission, the tax is on a federal instrumentality, which the Constitution impliedly forbids.

The Court of Appeals of Maryland, in upholding the assessment, pointed out that it did not exceed the value of appellant's tangible personal property within the state, and that the tax was in lieu of any direct tax on that property; and sustained it as an indirect tax on the property. It said, — Md. at p. —, 151 Atl. at p. 42:

"There is in this State no direct tax on the personal property of the corporation, Code Art. 81 sec. 163, and the value of the real estate upon which there is a direct tax, is deducted from the aggregate value of both its real and personal property before its stock is finally valued for assessment. So that the final assessment of the shares in so far as it represents tangible property includes no part of the value of the real estate but is based upon the value of the personal property alone * * * * * * under the amended law the value of the real property was excluded for the valuation of its stock, and that valuation represented only the tangible and intangible personal property of the corporation, without regard to any liens thereon. And since it could have taxed such property directly without reference to such liens there is no valid reason why it may not be taxed indirectly through appellant's capital

stock, on an assessment made without reference to liens or debts, for in neither case would the corporation be called upon to pay taxes upon more than the assessable value of its property. And there is no possible basis for the contention that the method adopted subjects any of the corporate property to double taxation. For under it the realty is subjected only to direct taxation, and the personal property only to indirect taxation, based in both instances on the fair value of the property taxed."

The tax was thus sustained on an adequate state ground, and it is unnecessary to consider the objections made to it on constitutional grounds. None of them is directed at the statute viewed, as the state court has construed it, as imposing a tax on the personal property of appellant. Nor is it necessary on this record to consider how far any objection made may be availed of by the non-resident stockholder, in the event of an attempted enforcement of the provisions of the statute which authorize the tax to be charged to stockholders, and create a lien upon the stock.

The objection that the property used by appellant in its power project is a federal instrumentality, is not specifically raised on this record; but it was considered and rejected in *Susquehanna Power Company* v. *State Tax Commission*, *supra*.

Dismissed.

A true copy.

Test:

Clerk, Supreme Court, U. S.